

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/1. INTRODUCTION TO THE CONSUMER CREDIT ACT 1974/(1) THE CONCEPT AND SCOPE OF REGULATION UNDER THE CONSUMER CREDIT ACT 1974/1. In general.

CONSUMER CREDIT (

1. INTRODUCTION TO THE

(1) THE CONCEPT AND SCOPE OF REGULATION UNDER THE

1. In general.

The Consumer Credit Act 1974¹ imposes regulation on certain contracts relating to credit² and hire³ and on ancillary credit business⁴. Much of the detailed machinery of the legislation is implemented by way of regulations made pursuant to the Act⁵.

In relation to agreements regulated by the Consumer Credit Act 1974, the Act constitutes a coherent and novel code, largely independent of the common law and the legislation which was previously applicable⁶.

Under the Act, types of agreements are categorised using a complex system of definitions and new terminology⁷.

1 The Consumer Credit Act 1974 extends to Northern Ireland: s 193. As to special provisions relating to Northern Ireland see ss 143, 144, 191 (ss 144, 191 as amended).

2 For the meaning of 'credit' under the Consumer Credit Act 1974 see para 83 post. See also para 2 post. Under the Consumer Credit Act 1974 the concept of 'credit' includes hire-purchase and conditional sale. As to consumer credit agreements see para 81 post; as to hire-purchase agreements see para 95 post; and as to conditional sale agreements see para 93 post. As to the contracts regulated by the Consumer Credit Act 1974 see also para 4 post.

3 As to consumer hire agreements see para 82 post.

4 As to ancillary credit business see para 271 et seq post.

5 As to the power to make regulations generally see para 114 post.

6 As to the former legislation relating to moneylenders and pawnbrokers see para 7 post; and as to the former hire-purchase legislation see para 6 post. As to the overlap of the Consumer Credit Act 1974 with other legislation and the common law see paras 3, 11 et seq post.

7 See ibid Pt II (ss 8-20) (as amended); and paras 2, 78 et seq post.

Examples are given illustrating the use of terminology employed in the Consumer Credit Act 1974 in s 188(1), Sch 2. However, the examples given are not exhaustive (s 188(2)), and the Secretary of State may by order amend Sch 2 by adding further examples or in any other way (s 188(4)). As to the Secretary of State see para 113 post. As to the power to make orders generally see para 114 post.

In the case of a conflict between Sch 2 and any other provision of the Act, that other provision is to prevail: s 188(3).

UPDATE

1-10 Introduction to the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1 In general

NOTE 1--Consumer Credit Act 1974 s 191 further amended: Enterprise Act 2002 Sch 25 para 6(39); Consumer Credit Act 2006 s 27(4).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/1. INTRODUCTION TO THE CONSUMER CREDIT ACT 1974/(1) THE CONCEPT AND SCOPE OF REGULATION UNDER THE CONSUMER CREDIT ACT 1974/2. Terminology.

2. Terminology.

Although the Consumer Credit Act 1974 is described as an Act for the protection of consumers¹, 'consumer' is not defined in the Act².

Central to the functioning of much of the Consumer Credit Act 1974 is the term 'credit', which includes a cash loan and any other form of financial accommodation³.

A further concept underlying much of the statutory scheme is the regulated agreement⁴, which is any consumer credit agreement⁵ or consumer hire agreement⁶ other than an exempt agreement⁷.

A consumer credit agreement is a personal credit agreement⁸ by which an individual is provided with credit not exceeding £25,000⁹.

A consumer hire agreement is an agreement for the bailment¹⁰ of goods by the owner¹¹ of the goods to an individual, being an agreement which (1) is not a hire-purchase agreement¹²; (2) is capable of subsisting for more than three months; and (3) does not require the hirer¹³ to make payments exceeding £25,000¹⁴.

Certain agreements enjoy exemption from some provisions of the Consumer Credit Act 1974 but are governed by the rest of the Act. These include small agreements¹⁵, non-commercial agreements¹⁶, certain agreements usually relating to the purchase of land and secured by a land mortgage¹⁷, agreements exempted from Part V of the Act¹⁸ by a determination of the Director General of Fair Trading¹⁹, pledges of documents of title²⁰ and overdraft facilities on current accounts²¹.

Some agreements may be partly regulated by the Consumer Credit Act 1974²².

1 See the Consumer Credit Act 1974, long title.

2 The distinction between consumer and commercial transactions was recommended by the Crowther Report: see the *Report of the Crowther Committee on Consumer Credit* (Cmnd 4596) (1971); and para 8 post. Although 'consumer' is not defined in the Consumer Credit Act 1974, what makes an agreement into a 'consumer' agreement for these purposes is that the debtor under the agreement is an individual (which includes a partnership) and that the payments do not exceed the monetary limit, presently £25,000: see ss 8, 15 (both as amended); notes 9, 14 infra; and paras 81-82 post. The purpose of the loan is in most cases irrelevant to the application of the Act. Thus business loans to individuals and partnerships are regulated by the Act. For the meaning of 'debtor' see para 81 note 3 post; and for the meaning of 'individual' see para 80 note 1 post. As to partnerships generally see PARTNERSHIP.

3 See ibid ss 9(1), 189(1); and para 83 post.

4 For the meaning of 'regulated agreement' see para 79 post.

5 See the Consumer Credit Act 1974 s 8(3); and para 81 post.

6 See ibid s 15(2); and para 82 post.

7 See ibid s 189(1); and para 79 post. As to exempt agreements see para 99 et seq post.

8 For the meaning of 'personal credit agreement' see para 80 post.

9 See the Consumer Credit Act 1974 s 8(2) (as amended), s 189(1); and para 81 post. As to the power to alter monetary limits see para 117 post.

- 10 As to bailment generally see BAILMENT.
- 11 For the meaning of 'owner' see para 82 note 1 post.
- 12 For the meaning of 'hire-purchase agreement' see para 95 post.
- 13 For the meaning of 'hirer' see para 82 note 3 post.
- 14 See the Consumer Credit Act 1974 s 15(1) (as amended), s 189(1); and para 82 post.
- 15 For the meaning of 'small agreement' see para 108 post.
- 16 See para 107 post.
- 17 See para 100 post.
- 18 In the Consumer Credit Act 1974 Pt V (ss 55-74) (as amended): see para 157 et seq post.
- 19 See para 179 post. As to the Director General of Fair Trading see para 110 post.
- 20 See the Consumer Credit Act 1974 s 114(3) (as amended); and para 208 post.
- 21 See para 179 post.
- 22 See the Consumer Credit Act 1974 s 18; and para 190 post.

UPDATE

1-10 Introduction to the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

2 Terminology

TEXT AND NOTE 19--Office of Director General of Fair Trading replaced by Office of Fair Trading: see COMPETITION vol 18 (2009) PARA 6.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/1. INTRODUCTION TO THE CONSUMER CREDIT ACT 1974/(1) THE CONCEPT AND SCOPE OF REGULATION UNDER THE CONSUMER CREDIT ACT 1974/3. Overlap of the Consumer Credit Act 1974 with other legislation and common law.

3. Overlap of the Consumer Credit Act 1974 with other legislation and common law.

The Consumer Credit Act 1974 does not replace the common law¹. In addition, although the Act repealed many statutes, it co-exists with certain other earlier and later statutory provisions in this area of the law². The Act and regulations³ made under it superimpose a system of regulatory controls on the existing law. In particular, the general law of contract⁴ remains applicable, save where it has been amended or disapplied by the Consumer Credit Act 1974.

1 As to the common law see para 11 et seq post.

2 See eg the Hire-Purchase Act 1964 (and paras 55-57 post); the Supply of Goods (Implied Terms) Act 1973 (and para 24 post); and the Unfair Contract Terms Act 1977 (and para 63 post).

3 As to the power to make regulations see para 114 post.

4 See para 15 et seq post; and CONTRACT. In some situations (eg where goods are repossessed), the law of tort is also applicable: see TORT.

UPDATE

1-10 Introduction to the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/1. INTRODUCTION TO THE CONSUMER CREDIT ACT 1974/(1) THE CONCEPT AND SCOPE OF REGULATION UNDER THE CONSUMER CREDIT ACT 1974/4. Scope of the Consumer Credit Act 1974.

4. Scope of the Consumer Credit Act 1974.

It is possible to characterise the provisions of the Consumer Credit Act 1974 as falling broadly into two groups: one group regulating the rights of parties to agreements, and the other providing for regulation of the consumer credit industry as a whole rather than applying to specific contracts. The two groups are, however, linked by the definition of a 'regulated agreement'¹, which determines whether transactions are subject to either the specific provisions relating to parties' rights or the general regulatory provisions².

The machinery of the legislation is complex, and a considerable amount of fine detail is left for regulations made by statutory instrument³. In practice this has permitted regular revision of matters which are subject to frequent change⁴ without amendments to the Act itself.

The Consumer Credit Act 1974 and regulations made under it regulate areas of contractual and ancillary credit⁵ activity, including contracts of loan⁶, hire⁷ (sometimes referred to as rental or leasing), hire-purchase⁸ (sometimes referred to as lease-purchase), conditional sale⁹ and credit sale¹⁰. The application of the Act is, however, subject to monetary limits¹¹ and the various exemptions¹².

The Act creates a regime of licensing for consumer credit businesses¹³. Its provisions also affect, *inter alia*, advertising¹⁴, canvassing¹⁵, pre-agreement representations¹⁶, entry into agreements¹⁷, form and content of agreements and necessary formalities¹⁸, cancellation of agreements¹⁹, the rights and liabilities of creditors and suppliers of goods in relation to each other and to borrowers²⁰, variation of agreements²¹, the consequences of default under agreements²², termination of agreements²³, securities²⁴, enforcement and judicial control of agreements²⁵, and ancillary credit business²⁶.

In addition to the provisions relating to regulated agreements, the Act contains provisions relating to extortionate credit bargains²⁷, which apply regardless of the value of the bargain²⁸.

1 For the meaning of 'regulated agreement' see para 79 post. See also para 2 ante.

2 There are, however, provisions of the Consumer Credit Act 1974 which relate to extortionate credit bargains regardless of whether or not they are regulated agreements: see the text and notes 27-28 infra. As to extortionate credit bargains see paras 109, 269-270 post.

3 See eg the Consumer Credit Act 1974 ss 179(1), 180(1); and paras 115-116 post. As to the power to make regulations generally see para 114 post.

4 Eg the alteration of monetary limits: see para 117 post.

5 For the meaning of 'credit' see para 83 post. See also para 2 ante.

6 See paras 2 ante, 83 post.

7 See para 82 post.

8 See para 95 post.

9 See para 93 post.

10 See para 93 post.

11 See para 2 ante. As to the power to alter monetary limits see para 117 post.

- 12 See para 2 ante.
- 13 See the Consumer Credit Act 1974 Pt III (ss 21-41); and para 119 et seq post.
- 14 See *ibid* ss 43-47 (s 43 as amended); and para 143 et seq post.
- 15 See *ibid* ss 48-51; and para 151 et seq post.
- 16 See *ibid* s 56; and para 177 post.
- 17 See *ibid* Pt V (ss 55-74) (as amended); and para 157 et seq post.
- 18 See *ibid* s 61; and para 160 et seq post.
- 19 See *ibid* ss 67-73 (s 70 as amended); and para 184 et seq post.
- 20 See *ibid* Pt VI (ss 75-86) (as amended); and paras 234-250 post.
- 21 See *ibid* s 82; and paras 191, 243 post.
- 22 See *ibid* ss 87-93; and para 263 et seq post.
- 23 See *ibid* ss 98-103 (s 101 as amended); and para 257 et seq post.
- 24 See *ibid* Pt VIII (ss 105-126) (as amended); and para 200 et seq post.
- 25 See *ibid* Pt IX (ss 127-144) (as amended); and para 288 et seq post.
- 26 See *ibid* Pt X (ss 145-160) (as amended); and para 271 et seq post.
- 27 See *ibid* ss 137-140 (s 139 as amended); and paras 269-270 post. See also note 2 supra.
- 28 See para 269 post. In relation to regulated agreements, the provisions of the Consumer Credit Act 1974 apply only within the monetary limit: see the text and note 11 supra; and para 2 ante.

UPDATE

1-10 Introduction to the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/1. INTRODUCTION TO THE CONSUMER CREDIT ACT 1974/(2) STATUTORY CONTROL BEFORE THE CONSUMER CREDIT ACT 1974/5. In general.

(2) STATUTORY CONTROL BEFORE THE

5. In general.

Until the Consumer Credit Act 1974 came into force¹, legislation regulating credit was sporadic and piecemeal. In particular, there was always the artificial but important distinction between loan credit (the simple lending of money) and sale credit (the postponement of payment for goods or services). The Consumer Credit Act 1974 is the first legislative attempt to create a code which encompasses the two, giving protection to consumers² across the whole spectrum of credit transactions.

The Act does not affect the legislation relating to bills of sale³, which was designed to give some measure of protection to a borrower who gives a chattel as security otherwise than by way of pledge⁴.

The Consumer Credit Act 1974 brings simple hire transactions⁵ within statutory control for the first time. Hire-purchase⁶ is retained as a separate concept, but is treated generally as any other credit transaction, save for certain provisions necessitated by the element of bailment which it involves⁷.

- 1 As to the commencement of the Consumer Credit Act 1974 see para 9 post.
- 2 As to the meaning of 'consumer' see para 2 text and note 2 ante.
- 3 See FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1620 et seq.
- 4 As to pledges see para 208 et seq post; and BAILMENT; PLEDGES AND PAWNS vol 36(1) (2007 Reissue) para 1 et seq. As to securities generally see para 200 et seq post.
- 5 See para 82 post.
- 6 See para 95 post.
- 7 See eg the Consumer Credit Act 1974 s 133 (and para 293 post); s 134 (and para 268 post). As to bailment generally see BAILMENT.

Much of the former control which was applicable only to hire-purchase (see para 6 post) has been retained and extended by the Consumer Credit Act 1974 so that it now applies to all forms of consumer credit. For the meaning of 'credit' see para 83 post. See also para 2 ante.

UPDATE

1-10 Introduction to the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/1. INTRODUCTION TO THE CONSUMER CREDIT ACT 1974/(2) STATUTORY CONTROL BEFORE THE CONSUMER CREDIT ACT 1974/6. Former hire-purchase legislation.

6. Former hire-purchase legislation.

Hire-purchase agreements¹ were first subjected to statutory control by the Hire-Purchase Act 1938, which was amended and enlarged by the Hire-Purchase Act 1954 and the Hire-Purchase Act 1964. The statutory code was consolidated by the Hire-Purchase Act 1965, although advertisements were outside the ambit of that consolidation and were covered by the Advertisements (Hire-Purchase) Act 1967².

The Hire-Purchase Act 1965 applied to all hire-purchase, conditional sale³ and credit sale⁴ agreements under which the hire-purchase or total purchase price did not exceed £5,000⁵, and where the hirer or buyer was not a body corporate⁶. It established certain formal requirements⁷, gave the hirer a right of cancellation⁸, made the dealer the agent of the finance company for the purpose of representations made in antecedent negotiations⁹, prohibited the exclusion of certain implied terms¹⁰, made provision for the supply of information to the hirer¹¹, gave him a right of termination¹², made provision for default notices¹³ and prevented the recovery of protected goods¹⁴.

The provisions of the Hire-Purchase Act 1964 relating to the title to motor vehicles are still in force¹⁵. Otherwise all the former hire-purchase legislation is repealed and replaced by the Consumer Credit Act 1974¹⁶.

1 Under the former hire-purchase legislation, 'hire-purchase agreement' was defined as an agreement for the bailment of goods under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee: Hire-Purchase Act 1938 s 21(1) (repealed); Hire-Purchase Act 1965 s 1(1) (repealed). For the meaning of 'hire-purchase agreement' under the Consumer Credit Act 1974, in which the definition is to similar effect, see para 95 post.

2 As to advertisements under the Consumer Credit Act 1974 see para 143 et seq post.

3 Conditional sale agreements were brought within the statutory ambit by the Hire-Purchase Act 1964, under which 'conditional sale agreement' was defined as an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the seller until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled: see s 29(1) (as amended by the Hire-Purchase Act 1965 s 59(4), Sch 5)); and the Hire-Purchase Act 1965 s 1(1), 58(1). The Hire-Purchase Act 1964 s 29(1) has now been substituted, and the Hire-Purchase Act 1965 has been repealed, by the Consumer Credit Act 1974: see the text and notes 15-16 infra. For the meaning of 'conditional sale agreement' under the Consumer Credit Act 1974, in which the definition is almost identical, see para 93 post.

4 'Credit sale agreement' was defined in the Hire-Purchase Act 1965 as an agreement for the sale of goods under which the purchase price is payable by five or more instalments, not being a conditional sale agreement (see note 3 supra): see s 1(1) (repealed). For the meaning of 'credit-sale agreement' under the Consumer Credit Act 1974 see para 93 post.

5 See the Hire-Purchase Act 1965 s 2 (amended by the Hire-Purchase (Increase of Limit of Value) (Great Britain) Order 1978, SI 1978/461, art 2). The Hire-Purchase Act 1965 has been repealed by the Consumer Credit Act 1974: see the text and note 16 infra. As to the monetary limit under the Consumer Credit Act 1974 see para 2 ante.

Note that in applying the financial limit under the Hire-Purchase Act 1965 the relevant sum was the total price, while under the Consumer Credit Act 1974 it is the amount of credit provided (ie the total price less interest and other charges).

6 See the Hire-Purchase Act 1965 s 4 (repealed). Cf the definition of 'consumer credit agreement' in the Consumer Credit Act 1974, which similarly excludes corporate debtors: see para 81 post. See also para 2 ante.

7 These required, inter alia, that the agreement be written and contain certain specified information, and that copies be given in certain circumstances: see the Hire-Purchase Act 1965 ss 5-9 (all repealed). Failure to comply with such requirements rendered the agreement unenforceable by the owner or seller: see s 5(1) (repealed). As to the present law see para 160 et seq post (form and content), para 171 et seq post (copies), para 169 post (consequences of improper execution).

8 See *ibid* s 11 (repealed). The right to cancel applied where the agreement was signed at some premises other than those of the owner or seller: see s 11(1) (repealed). As to the present law see para 183 et seq post.

9 See *ibid* s 16 (repealed). As to agency and representations made in antecedent negotiations under the present law see paras 176-178 post.

10 See *ibid* ss 17-19 (relating to implied terms in hire-purchase agreements), which were repealed and replaced by the Supply of Goods (Implied Terms) Act 1973 ss 9-12, 14, 15. These provisions have all now been substituted by the Consumer Credit Act 1974: see para 24 post. As to implied terms in conditional sale agreements see the Sale of Goods Act 1979; and SALE OF GOODS AND SUPPLY OF SERVICES.

11 See the Hire-Purchase Act 1965 s 21 (repealed). As to the present law see para 240 post.

12 See *ibid* ss 27, 28 (both repealed). As to the present law see para 257 et seq post.

13 See *ibid* ss 25, 26 (both repealed). As to the present law see para 263 et seq post.

14 See *ibid* ss 33-40 (both repealed). As to the present law see para 265 post.

15 See the Hire-Purchase Act 1964 Pt III (ss 27-29) (as substituted); and paras 55-57 post.

16 See the Consumer Credit Act 1974 s 192(3), (4), Sch 5.

UPDATE

1-10 Introduction to the Consumer Credit Act 1974

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Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/1. INTRODUCTION TO THE CONSUMER CREDIT ACT 1974/(2) STATUTORY CONTROL BEFORE THE CONSUMER CREDIT ACT 1974/7. Former legislation relating to moneylenders and pawnbrokers.

7. Former legislation relating to moneylenders and pawnbrokers.

Under the Moneylenders Acts 1900 to 1927¹, moneylending businesses² were required to obtain an annual excise licence³; but the licence was not granted except to a person holding a certificate granted by the magistrates' court⁴. Moneylenders' contracts had to comply with various formalities as to form and content and execution, and in the event of non-compliance were unenforceable⁵. Advertising and the seeking of business were also regulated⁶. There was a power to reopen agreements where the interest was excessive and the transaction harsh and unconscionable⁷.

Pawnbroking was formerly regulated by the Pawnbrokers Act 1872 and the Pawnbrokers Act 1960⁸.

The Moneylenders Acts 1900 to 1927, the Pawnbrokers Act 1872 and the Pawnbrokers Act 1960 were repealed and replaced by the Consumer Credit Act 1974⁹.

1 See the Money-lenders Act 1900 and the Moneylenders Act 1927 (both repealed: see the text and note 9 infra): see the Moneylenders Act 1927 s 19(1) (repealed).

2 'Moneylender' was defined as including every person whose business is that of moneylending, or who advertises himself or holds himself out in any way as carrying on that business: see the Money-lenders Act 1900 s 6 (repealed); and the Moneylenders Act 1927 s 19(2) (repealed). There were, however, certain exceptions: see the Money-lenders Act 1900 s 6(a)-(e) (repealed). Cf the provisions as to exempt agreements under the Consumer Credit Act 1974: see paras 2 ante, 99 et seq post.

3 See the Moneylenders Act 1927 s 1 (repealed).

4 See ibid s 2 (repealed). As to the grounds for refusal of a certificate see s 2(6) (repealed). Cf the issue of a licence under the Consumer Credit Act 1974: see para 119 et seq post. As to enforcement under the 1974 Act of an agreement made by an unlicensed trader see para 125 post.

5 As to the formalities see the Moneylenders Act 1927 s 6 (repealed). As to the formalities required under the Consumer Credit Act 1974 see para 160 et seq post. In the case of failure to comply with the formalities under the 1974 Act, an agreement may nevertheless be enforced on a court order: see para 169 post.

6 See the Moneylenders Act 1927 s 5 (repealed). As to the provisions of the Consumer Credit Act 1974 relating to advertisements and the seeking of business see para 143 et seq post.

7 See the Money-lenders Act 1900 s 1 (repealed). As to extortionate credit bargains under the Consumer Credit Act 1974 see paras 109, 269-270 post.

8 As to pawnbroking generally see BAILMENT; PLEDGES AND PAWNS vol 36(1) (2007 Reissue) para 1 et seq. As to provisions of the Consumer Credit Act 1974 relating to pawnbroking see para 208 et seq post.

9 See the Consumer Credit Act 1974 s 192, Sch 5. These repeals became fully operational on and with effect from 19 May 1985: see the Consumer Credit Act 1974 (Commencement No 8) Order 1983, SI 1983/1551. See further para 9 post.

The Secretary of State may by order make such amendments or repeals of any provision of any local Act as appears to him necessary or expedient in consequence of the replacement by the Consumer Credit Act 1974 of the enactments relating to pawnbrokers and moneylenders: s 178. See eg the Consumer Credit (Local Acts) Order 1984, SI 1984/1107 (which repealed the City of London Police Act 1839 s 34). As to the Secretary of State see para 113 post. As to the power to make orders generally see para 114 post.

UPDATE

1-10 Introduction to the Consumer Credit Act 1974

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Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/1. INTRODUCTION TO THE CONSUMER CREDIT ACT 1974/(3) IMPLEMENTATION OF THE CONSUMER CREDIT ACT 1974/8. Review of consumer credit law.

(3) IMPLEMENTATION OF THE

8. Review of consumer credit law.

The Committee on Consumer Credit was appointed in September 1968 to carry out a comprehensive review of consumer credit law, encompassing the granting of credit and the taking of security. The committee's report¹ was published in March 1971.

The report was particularly critical of the regulation of transactions according to their form rather than substance or function, the failure to distinguish between consumer and commercial transactions, the separate treatment of lending and taking of security, the absence of a rational policy regarding third party rights, excessive technicality and inadequate protection for consumers in credit transactions. It concluded that amendment of the then existing law² would be insufficient, and recommended that the entire range of legislation affecting credit should be repealed and replaced with new legislation.

Most of the recommendations, with additional safeguards for consumers, were implemented by the Consumer Credit Act 1974, which was passed on 31 July 1974³.

- 1 See the *Report of the Crowther Committee on Consumer Credit* (Cmnd 4596) (1971) ('the Crowther Report').
- 2 See eg paras 6-7 ante.
- 3 As to the commencement of the Consumer Credit Act 1974 see para 9 post.

UPDATE

1-10 Introduction to the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/1. INTRODUCTION TO THE CONSUMER CREDIT ACT 1974/(3) IMPLEMENTATION OF THE CONSUMER CREDIT ACT 1974/9. Commencement.

9. Commencement.

Some provisions of the Consumer Credit Act 1974 came into effect on its passing¹ but, due to the complex nature of the legislation², many others were brought into force in stages; and repeals of earlier legislation were similarly staggered, as were amendments of existing enactments which affected consumer credit³.

The provisions of the Consumer Credit Act 1974 which were not already operational mainly came into effect on 19 May 1985⁴. On 20 May 1985 the monetary limit within which the Act is applicable was increased to £15,000⁵; and on 1 May 1998 the limit was further increased to £25,000⁶.

1 Ie 31 July 1974: see the Consumer Credit Act 1974 s 192(1), Sch 3. See also para 8 ante.

2 Much of the detailed machinery of the legislation is dealt with by way of regulations. As to the power to make regulations generally see para 114 post.

3 As to transitional provisions, commencement of the Consumer Credit Act 1974 and amendments and repeals of other enactments see the Consumer Credit Act 1974 s 192, Schs 3, 4, 5.

4 See the Consumer Credit Act 1974 (Commencement No 8) Order 1983, SI 1983/1551. As to the commencement orders made see the Consumer Credit Act 1974 (Commencement No 1) Order 1975, SI 1975/2123; the Consumer Credit Act 1974 (Commencement No 2) Order 1977, SI 1977/325 (as amended); the Consumer Credit Act 1974 (Commencement No 3) Order 1977, SI 1977/802; the Consumer Credit Act 1974 (Commencement No 4) Order 1977, SI 1977/2163; the Consumer Credit Act 1974 (Commencement No 5) Order 1979, SI 1979/1685; the Consumer Credit Act 1974 (Commencement No 6) Order 1980, SI 1980/50; the Consumer Credit Act 1974 (Commencement No 7) Order 1981, SI 1981/280; the Consumer Credit Act 1974 (Commencement No 8) Order 1983, SI 1983/1551; the Consumer Credit Act 1974 (Commencement No 9) Order 1984, SI 1984/436; and the Consumer Credit Act 1974 (Commencement No 10) Order 1989, SI 1989/1128.

5 See the Consumer Credit (Increase of Monetary Limits) Order 1983, SI 1983/1878, art 4, Schedule Pt II (as originally enacted).

6 See the Consumer Credit (Increase of Monetary Limits) (Amendment) Order 1998, SI 1998/996, art 2; and paras 81-82 post.

UPDATE

1-10 Introduction to the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/1. INTRODUCTION TO THE CONSUMER CREDIT ACT 1974/(4) THE SCOPE OF THIS TITLE/10. Matters referred to.

(4) THE SCOPE OF THIS TITLE

10. Matters referred to.

This title deals with all matters covered by the Consumer Credit Act 1974 and the regulations¹ made under it. It does not, however, set out fully the general common law and statute law which may also apply to contracts which are subject to the Act². The law relating to contracts generally is set out elsewhere³.

- 1 As to the power to make regulations generally see para 114 post.
- 2 As to the framework of the common law and statutory provisions other than the Consumer Credit Act 1974 see para 11 et seq post.
- 3 See generally CONTRACT. See also MISREPRESENTATION AND FRAUD; SALE OF GOODS AND SUPPLY OF SERVICES.

UPDATE

1-10 Introduction to the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(1) INTRODUCTION/11. In general.

2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE (1) INTRODUCTION

11. In general.

The Consumer Credit Act 1974 and regulations made under that Act¹ impose regulation on transactions which otherwise are governed by a variety of statutory and common law rules. Except in so far as the Consumer Credit Act 1974 otherwise provides, those rules remain in force. The Act interacts with the other statutory and common law rules as they govern contracts between creditor and debtor or owner and hirer², contracts between creditor and surety³ and ancillary credit business⁴.

1 See para 78 et seq post. As to the power to make regulations under the Consumer Credit Act 1974 generally see para 114 post.

2 See para 12 post.

3 See para 13 post.

4 See para 14 post.

UPDATE

11-16 In general

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(1) INTRODUCTION/12. Contracts between creditor and debtor or owner and hirer.

12. Contracts between creditor and debtor or owner and hirer.

Contracts between creditors and debtors or owners and hirers may be affected by the common law or by statutory provisions other than the Consumer Credit Act 1974¹. Contracts between creditors and debtors or owners and hirers include contracts of loan², hire-purchase³, conditional sale⁴, credit sale⁵ and hire⁶.

- 1 As to the provisions of the Consumer Credit Act 1974 see para 78 et seq post.
- 2 See paras 16-22 post.
- 3 See paras 23-44 post.
- 4 See paras 45-48 post.
- 5 See paras 49-51 post.
- 6 See paras 52-54 post.

UPDATE

11-16 In general

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(1) INTRODUCTION/13. Contracts between creditor and surety.

13. Contracts between creditor and surety.

Contracts between creditors and sureties may be affected by the common law or by statutory provisions other than the Consumer Credit Act 1974¹. Of particular relevance is the law relating to contracts of guarantee and indemnity², charges and mortgages³, pledges and pawns⁴, bills of sale⁵ and negotiable instruments⁶.

- 1 As to the provisions of the Consumer Credit Act 1974 see para 78 et seq post.
- 2 See FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1013 et seq.
- 3 See MORTGAGE.
- 4 See BAILMENT; PLEDGES AND PAWNS vol 36(1) (2007 Reissue) para 1 et seq.
- 5 See FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1620 et seq.
- 6 See FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1400 et seq.

UPDATE

11-16 In general

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(1) INTRODUCTION/14. Ancillary credit business.

14. Ancillary credit business.

The Consumer Credit Act 1974 defines ancillary credit business as any business so far as it comprises or relates to: (1) credit brokerage; (2) debt-adjusting; (3) debt-counselling; (4) debt-collecting; or (5) the operation of a credit reference agency¹. The operation of these businesses is regulated by Consumer Credit Act 1974². However, save where the Act provides otherwise, these activities continue to be governed by the general common law of contract³.

1 See para 271 post.

2 See para 271 et seq post.

3 See para 15 et seq post; and CONTRACT.

UPDATE

11-16 In general

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(2) GENERAL COMMON LAW OF CONTRACT/15. The essentials of a contract.

(2) GENERAL COMMON LAW OF CONTRACT

15. The essentials of a contract.

An agreement must comply with a number of requirements to be a legally binding contract: (1) there must be an offer and an acceptance which correspond with each other¹; (2) each promise or obligation must be supported by consideration² passing from the other party unless the contract is made by deed³; (3) the parties must have an intention to create legal relations⁴; (4) each party must have the capacity to contract⁵ and, if an agent, actual or apparent authority to contract⁶; and (5) the terms of the contract must be certain and complete⁷. Any special formalities required by the law in particular contracts must be complied with⁸.

1 As to offer and acceptance see CONTRACT vol 9(1) (Reissue) para 631 et seq post.

2 One party's promise may be consideration for the other party's promise. A customer's acceptance of credit is consideration for the creditor's provision of credit. Some consumer credit agreements come into existence when the customer signs an agreement that he will accept credit from the creditor. Some other agreements involve a continuing offer of credit on which the customer may or may not draw at his option, in which case the contract comes into existence when the customer draws on the credit, and so simultaneously accepts the offer and gives consideration for it. As to consideration see CONTRACT vol 9(1) (Reissue) para 727 et seq post.

3 See CONTRACT vol 9(1) (Reissue) paras 621, 727 post; DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) para 59.

4 As to the intention to create legal relations see CONTRACT vol 9(1) (Reissue) para 718 et seq post.

5 As to capacity to contract see CONTRACT vol 9(1) (Reissue) para 630 post. A credit or hire contract cannot be enforced against a person who was under 18 years of age at the time of entry into it, unless the goods hired or financed were 'necessaries', and the contract was to his benefit: see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) paras 18-19.

6 See AGENCY vol 1 (2008) PARA 29 et seq. The Consumer Credit Act 1974 superimposes agency in certain situations where none would exist at common law: see paras 176-178 post.

7 See CONTRACT vol 9(1) (Reissue) para 667 et seq post.

8 As to form and formalities see CONTRACT vol 9(1) (Reissue) para 620 et seq post. As to the formalities laid down in the Consumer Credit Act 1974 see para 160 et seq post.

UPDATE

11-16 In general

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(3) LOAN CONTRACTS/16. In general.

(3) LOAN CONTRACTS

16. In general.

A loan contract is an agreement by which one party (the 'lender') agrees to pay money to another (the 'borrower'), or to a third party at the borrower's request, on terms that the borrower will repay the money together with any agreed interest¹. For the agreement to constitute a loan, the payment must be made with a view to giving the borrower financial accommodation². There is no limit at common law on the types of contract pursuant to which credit may be given. Such contracts are governed by the usual contractual principles³, subject to the intervention of statute and particularly of statutory provisions regulating dealings between consumers and businesses⁴. Examples of loan contracts are overdrafts, credit card arrangements and check trading arrangements⁵.

1 See generally CONTRACT.

2 See *Potts' Executors v IRC*[1951] AC 443, [1951] 1 All ER 76, HL. Cf the definition in the Consumer Credit Act 1974 of 'credit' as including a cash loan and any other form of financial accommodation: see para 83 post.

3 See para 15 ante; and CONTRACT.

4 See eg the Consumer Credit Act 1974 (and para 78 et seq post); the Unfair Contract Terms Act 1977 (and para 63 post); and the Unfair Terms in Consumer Contracts Regulations 1994, SI 1994/3159 (and para 64 post). See also the Sale of Goods Act 1979; the Supply of Goods and Services Act 1982; and CONTRACT; SALE OF GOODS AND SUPPLY OF SERVICES.

5 See paras 17-19 post.

UPDATE

11-16 In general

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

16 In general

NOTE 4--SI 1994/3159 now Unfair Terms in Consumer Contracts Regulations 1999, SI 1999/2083.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(3) LOAN CONTRACTS/17. Overdrafts.

17. Overdrafts.

Where a bank honours a cheque drawn on it by a customer whose account is not sufficiently in funds to meet the cheque, the result is a loan from the bank to the customer¹. The bank, in making overdraft facilities available, makes a continuing offer to the customer, who accepts the offer whenever he draws a cheque within the agreed limits of the facility². Where there is no prior agreement, the customer in writing the cheque requests the bank to honour it and offers to repay the sum lent plus the bank's charges. In honouring the cheque, the bank provides the customer with financial accommodation³.

1 *Blackburn Building Society v Cunliffe Brooks & Co* (1882) 22 Ch D 61 CA; affd sub nom *Cunliffe Brooks & Co v Blackburn and District Benefit Building Society* (1884) 9 App Cas 857 HL. See further FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 967 et seq. This situation is to be distinguished from that in which one party lays out money for another as a matter of administrative convenience, for example when a solicitor meets a disbursement for a client: see *Potts' Executors v IRC* [1951] AC 443, [1951] 1 All ER 76, HL. As to disbursements see LEGAL PROFESSIONS vol 66 (2009) PARA 957.

2 See FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 967. As to offer and acceptance see CONTRACT 9(1) (Reissue) para 631 et seq post.

3 See *Cuthbert v Roberts, Lubbock & Co* [1909] 2 Ch 226, CA; and FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 967.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(3) LOAN CONTRACTS/18. Credit cards.

18. Credit cards.

Credit cards operate in a number of different contractual ways involving contracts between the credit card issuer, the supplier of goods and the cardholder¹.

1 See *Re Charge Card Services Ltd* [1989] Ch 497, [1988] 3 All ER 702, CA; and FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 904.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(3) LOAN CONTRACTS/19. Check trading.

19. Check trading.

Check trading arrangements involve three bilateral contracts. Check traders sell trading checks and vouchers¹ to the customer who presents them as payment to a supplier. The function of the vouchers is to empower the supplier to debit the check trader for goods and services supplied. The contract of sale between supplier and customer depends on the arrangements made between supplier and check trader, and between check trader and customer. As between check trader and customer, the agreement amounts to a loan².

1 As to credit-token agreements regulated by the Consumer Credit Act 1974 see para 88 post.

2 See *Premier Clothing & Supply Co v Hillcoat* [1969] CLY 2279a.

UPDATE

19 Check trading

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(3) LOAN CONTRACTS/20. Repayment and interest.

20. Repayment and interest.

A loan contract¹ entitles the lender to repayment on the date stipulated in the contract, with such interest as the parties may have agreed or as statute may provide². Contractual interest runs only until the lender obtains a judgment on the contract, unless the contract itself provides otherwise³; after judgment, interest accrues at the rate provided from time to time by statute⁴. An agreement for interest may be implied⁵, or may be incorporated by previous course of dealing⁶. If no date is stipulated for repayment, the borrower is liable to repay the loan from the time of the loan, without notice⁷. The parties may agree that demand is a precondition of repayment⁸. Payments by the debtor to the lender are presumed to be applied first in payment of interest, and only then in reduction of principal⁹.

1 As to loan contracts see para 16 ante.

2 See eg the Insolvency Act 1986; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 545; FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1303 et seq.

3 *Re Sneyd, ex p Fewings* (1883) 25 Ch D 338, CA; *Sewing Machine Rentals Ltd v Wilson* [1975] 3 All ER 553, [1976] 1 WLR 37, CA. See CIVIL PROCEDURE.

4 Ie under the Judgments Act 1838: see CIVIL PROCEDURE.

5 Eg in an agreement for an overdraft or a bank loan where an interest term is implied by the custom of bankers: see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 968.

6 See *Gwyn v Godby* (1812) 4 Taunt 346; and FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 968.

7 *Norton v Ellam* (1837) 2 M & W 461. The borrower is liable to repay the loan without notice even if the contract provided for repayment 'on demand': see *Norton v Ellam* supra. See also *Walton v Mascall* (1844) 13 M & W 452; *Re Brown's Estate, Brown v Brown* [1893] 2 Ch 300. Cf *Re Colonial Finance, Mortgage, Investment and Guarantee Corp Ltd* (1905) 6 SR (NSW) 6 at 9; *Re A Company* [1985] BCLC 37; *Bank of Credit and Commerce International SA v Blattner* (20 November 1986, unreported). See further MORTGAGE vol 77 (2010) PARA 538.

8 This term may be implied from the circumstances, usage or course of dealing, as in the case of money deposited with a bank: see *Joachimson v Swiss Banking Corp* [1921] 3 KB 110, CA; and FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 968.

9 See *Abrahams v Dimmock* [1915] 1 KB 662, CA; and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1734.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(3) LOAN CONTRACTS/21. The lender's remedies on default.

21. The lender's remedies on default.

If the borrower fails to repay the loan in accordance with the terms of the agreement, the lender may sue for the money¹. As a general rule, the lender cannot in addition recover interest by way of damages for late payment². However, if the loan agreement provides for interest up to the date of repayment, the lender can recover further interest for the period between the agreed repayment date and the date of actual repayment or judgment, even if the agreement makes no express provision in relation to this period³. Special damages are recoverable by a lender who has incurred interest in obtaining finance elsewhere, provided that the possibility of his incurring such charges was in the reasonable contemplation of the parties when the contract was made⁴.

1 As to remedies for breach of contract see CONTRACT vol 9(1) (Reissue) para 986 et seq post.

2 See *London, Chatham and Dover Rly Co v South Eastern Rly Co* [1893] AC 429, 63 LJ Ch 93, HL; *President of India v La Pintada Cia Navigacion SA* [1985] AC 104, [1984] 2 All ER 773, HL; and FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1305.

3 *Cook v Fowler* (1874) LR 7 HL 27; *Re Roberts, Goodchap v Roberts* (1880) 14 ChD 49, CA.

4 *Trans Trust SPRL v Danubian Trading Co Ltd* [1952] 2 QB 297, [1952] 1 All ER 970, CA; *Wadsworth v Lydall* [1981] 2 All ER 401, [1981] 1 WLR 598, CA. See further CIVIL PROCEDURE; FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1305.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(3) LOAN CONTRACTS/22. Acceleration clauses.

22. Acceleration clauses.

Where loans are repayable by instalments, agreements often provide for the lender to call in the loan and interest if there is default on any instalment, or on the occurrence of any other specified event, such as breach of another term of the agreement, the borrower's insolvency, the institution of insolvency or winding-up proceedings against the borrower and the levying of distress, execution or any legal process on the borrower's property.

Acceleration clauses triggered by a default in the debtor's obligations are enforceable unless, by not being based on a genuine pre-estimate of the lender's loss resulting from the default, they constitute a penalty¹. A provision for accelerated repayment of the principal and accrued interest only is not penal, but a provision for the lender to recover interest for the whole period of the loan without a rebate for the unaccrued interest in addition to the principal will be struck down as a penalty².

Where the trigger for the acceleration clause is a specified event other than a breach of the agreement, the clause cannot be struck down as a penalty³. However, if such a clause can be shown to be unfair or unreasonable, it may on statutory grounds be held not to be valid as against a debtor who is a consumer or who is dealing on a lender's standard terms of business⁴.

1 *Oresundsvaret Aktiebolag v Lemos, The Angelic Star* [1988] 1 Lloyd's Rep 122, CA; *Forward Trust Ltd v Robinson* [1987] CCLR 10. As to penalty clauses generally see CONTRACT.

2 *Oresundsvaret Aktiebolag v Lemos, The Angelic Star* [1988] 1 Lloyd's Rep 122 at 125, CA, per Sir John Donaldson MR. But see *Protector Endowment Loan & Annuity Co v Grice* (1880) 5 QBD 592, 49 LJQB 812, CA, in which repayment was by instalments calculated so as to cover principal, interest and expenses, and the court upheld a clause for the full outstanding balance to be repayable upon the failure of a single instalment. This case is difficult to reconcile with *Oresundsvaret Aktiebolag v Lemos, The Angelic Star* supra, in which it was not mentioned, and it may not have survived that more recent decision.

3 *Export Credits Guarantee Department v Universal Oil Products Co* [1983] 2 All ER 205, [1983] 1 WLR 399, HL. See also *Bridge v Campbell Discount Co Ltd* [1962] AC 600, [1962] 1 All ER 385, HL.

4 See the Unfair Contract Terms Act 1977; the Unfair Terms in Consumer Contracts Regulations 1994, SI 1994/3159; and paras 63-64 post. See also CONTRACT vol 9(1) (Reissue) paras 790 et seq, 820 et seq post.

UPDATE

22-25 Acceleration clauses ... In general

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

22 Acceleration clauses

NOTE 4--SI 1994/3159 now Unfair Terms in Consumer Contracts Regulations 1999, SI 1999/2083.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(4) HIRE-PURCHASE/(i) Introduction/23. In general.

(4) HIRE-PURCHASE

(i) Introduction

23. In general.

A hire-purchase agreement is a contract of bailment¹ under which goods² are hired by the owner and although the hirer is not obliged to buy the goods, he has the contractual option to purchase them should he so choose³.

Hire-purchase agreements should not be confused with instalment sale agreements such as conditional sale⁴ or credit-sale⁵ agreements under which the buyer is committed to purchase the goods, though the passing of ownership of the property may be deferred until full payment of the price.

A hire-purchase transaction frequently involves three parties: (1) a supplier of the goods; (2) an owner (often a finance company) of the goods; and (3) a hirer of the goods. It is common for the hirer to choose goods, which are then bought from the supplier by the owner, who subsequently hires them to the hirer under a hire-purchase agreement.

1 As to bailment see generally BAILMENT.

2 For the meaning of 'goods' see the Sale of Goods Act 1979 s 61; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) para 30. Hire-purchase is a type of bailment and so is only applicable to personal chattels capable of physical delivery: see BAILMENT.

3 See *Helby v Matthews*[1895] AC 471, HL, where it was decided that an agreement which merely conferred an option to purchase on the hirer was not an agreement to buy within the Factors Act 1889 s 9, and that therefore the hirer could not, before he exercised the option, pass a good title to a pledgee of the hired goods. See also *Cramer v Giles* (1883) Cab & El 151; *Re Rankin and Shilliday*[1927] NI 162, CA; *Modern Light Cars Ltd v Seals*[1934] 1 KB 32.

For the meaning of 'hire-purchase agreement' for the purposes of the statutory protection given to purchasers of motor vehicles in good faith and without notice of the agreement see para 55 note 2 post. For the meaning of 'hire-purchase agreement' for the purposes of the Supply of Goods (Implied Terms) Act 1973 see para 24 note 1 post. For the meaning of 'hire-purchase agreement' under the Consumer Credit Act 1974 see para 95 post.

4 See eg *Lee v Butler*[1893] 2 QB 318, CA; *Hewison v Ricketts* (1894) 71 LT 191. As to conditional sale agreements see paras 45-48 post. See also para 93 post.

5 As to credit-sale agreements see paras 49-51 post. See also para 93 post.

UPDATE

22-25 Acceleration clauses ... In general

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

23-25 In general

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(4) HIRE-PURCHASE/(ii) Terms implied by Statute other than the Consumer Credit Act 1974/24. Terms implied by statute.

(ii) Terms implied by Statute other than the Consumer Credit Act 1974

24. Terms implied by statute.

Although hire-purchase agreements are not contracts of sale¹, the terms implied into hire-purchase agreements by statute are similar to those implied into sale agreements².

Hire-purchase agreements contain the following terms implied by statute: that the owner will have a right to sell the goods at the time when the property in the goods is to pass³; that goods bailed by description correspond with that description⁴; that goods bailed in the course of a business⁵ are of satisfactory quality⁶; that goods bailed in the course of a business are reasonably fit for their purpose⁷; and that goods bailed by reference to sample correspond with the sample in quality and will be free from any defect, rendering them unsatisfactory, which would not be apparent on reasonable examination⁸.

The following terms as to title are implied into hire-purchase agreements: (1) that the goods are free, and will remain free until the time when the property in the goods is to pass, from any charge or encumbrance not disclosed or known to the person to whom the goods are bailed before the agreement is made⁹; (2) that the hirer will enjoy quiet possession of the goods except so far as it may be disturbed by any person entitled to the benefit of any charge or encumbrance so disclosed or known¹⁰. Where it appears from the agreement or is to be inferred from the circumstances of the agreement that there is an intention that the owner should transfer only such title as he or a third person may have, a term is implied (a) that all charges or encumbrances known to the owner and not known to the hirer have been disclosed to the hirer before the agreement is made¹¹; and (b) that neither the owner, nor, in a case where the parties to the agreement intend that any title which may be transferred is to be only such title as a third person may have, that person, nor anyone claiming through or under the owner or that third person otherwise than under a charge or encumbrance disclosed or known to the hirer before the agreement is made, will disturb the quiet possession of the hirer¹².

If the hirer is dealing as a consumer, greater protection is given than if dealing in the course of a business¹³. Certain of the implied terms cannot be excluded or restricted, while others can only be excluded or restricted as against a person not dealing as a consumer and to the extent that they satisfy the requirement of reasonableness¹⁴.

The hirer has no right to sell or dispose of the goods during the hiring as the goods are not his property. However, despite lack of title, a disposition by the hirer may in some circumstances pass good title to a buyer, for example where the hirer is a mercantile agent¹⁵ for the owner or is held out by the owner as being the owner or as being authorised to sell or dispose of the goods¹⁶, or under the provisions of the Hire-Purchase Act 1964¹⁷.

1 As to hire-purchase agreements see para 23 ante. For the purposes of the Supply of Goods (Implied Terms) Act 1973, 'hire-purchase agreement' means an agreement, other than a conditional sale agreement, under which (1) goods are bailed or hired in return for periodical payments by the person to whom they are bailed or hired; and (2) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following occurs: (a) the exercise of an option to purchase by that person; (b) the doing of any other specified act by any party to the agreement; and (3) the happening of any other specified event: s 15(1) (substituted by the Consumer Credit Act 1974 s 192(3)(a), Sch 4 paras 35, 36).

As to contracts of sale see CONTRACT; SALE OF GOODS AND SUPPLY OF SERVICES.

2 As to implied terms see CONTRACT vol 9(1) (Reissue) para 778 et seq post; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) paras 69, 467. The Consumer Credit Act 1974 imposes further specific obligations and duties if the agreement is regulated. As to the provisions of the Consumer Credit Act 1974 see para 78 et seq post. For the meaning of 'regulated' see para 79 post.

3 Supply of Goods (Implied Terms) Act 1973 s 8(1)(a) (substituted by the Consumer Credit Act 1974 Sch 4 paras 35, 36; and amended by the Sale and Supply of Goods Act 1994 s 7(1), Sch 2 para 4(1), (2)). See also SALE OF GOODS AND SUPPLY OF SERVICES.

4 Supply of Goods (Implied Terms) Act 1973 s 9(1) (substituted by the Consumer Credit Act 1974 Sch 4 paras 35, 36; and amended by the Sale and Supply of Goods Act 1994 Sch 2 para 4(1), (3)).

5 'Business' includes a profession and the activities of any government department, or local or public authority: Supply of Goods (Implied Terms) Act 1973 s 15(1) (substituted by the Consumer Credit Act 1974 Sch 4 paras 35, 36).

6 Supply of Goods (Implied Terms) Act 1973 s 10(2) (substituted by the Sale and Supply of Goods Act 1994 Sch 2 para 4(1), (4)). Goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, the price (if relevant) and all the other relevant circumstances: Supply of Goods (Implied Terms) Act 1973 s 10(2A) (added by the Sale and Supply of Goods Act 1994 Sch 2 para 4(1), (4)). The quality of the goods includes their state and condition and the following (among others) are in appropriate cases aspects of the quality of goods: fitness for all the purposes for which goods of the kind in question are commonly supplied; appearance and finish; freedom from minor defects; safety; and durability: Supply of Goods (Implied Terms) Act 1973 s 10(2B) (added by the Sale and Supply of Goods Act 1994 Sch 2 para 4(1), (4)). The term implied does not extend to any matter making the quality of goods unsatisfactory (1) which is specifically drawn to the attention of the person to whom the goods are bailed or hired before the agreement is made; (2) where that person examines the goods before the agreement is made, which that examination ought to reveal; or (3) where the goods are bailed or hired by reference to a sample, which should have been apparent on a reasonable examination of the sample: Supply of Goods (Implied Terms) Act 1973 s 10(2C) (added by the Sale and Supply of Goods Act 1994 Sch 2 para 4(1), (4)). An implied term as to quality or fitness for a particular purpose may be annexed to a hire-purchase agreement by usage: Supply of Goods (Implied Terms) Act 1973 s 10(4) (substituted by the Consumer Credit Act 1974 Sch 4 paras 35, 36; and amended by the Sale and Supply of Goods Act 1994 Sch 2 para 4(1), (4)). The implied undertakings as to quality or fitness set out in this provision apply to a hire-purchase agreement made by a person who in the course of a business is acting as agent for the owner as they apply to an agreement made by the owner in the course of a business, except where the owner is not bailing or hiring in the course of a business and either the person to whom the goods are bailed or hired knows that fact or reasonable steps are taken to bring it to the notice of that person before the agreement is made: Supply of Goods (Implied Terms) Act 1973 s 10(5) (substituted by the Consumer Credit Act 1974 Sch 4 paras 35, 36).

In relation to contracts made before 3 January 1995, the goods had to be of 'merchantable quality', ie as fit for the purpose or purposes for which goods of that kind were commonly bought as it is reasonable to expect having regard to any description applied to them, the price (if relevant) and all the other relevant circumstances: Supply of Goods (Implied Terms) Act 1973 s 15(2) (repealed). No such condition was implied (a) as regards defects specifically drawn to the attention of the person to whom the goods were bailed or hired before the agreement was made; or (b) if that person examined the goods before the agreement was made, as regards defects which that examination ought to have revealed: s 10(2)(a), (b) (as originally enacted).

7 Ibid s 10(3) (substituted by the Consumer Credit Act 1974 Sch 4 paras 35, 36; and amended by the Sale and Supply of Goods Act 1994 Sch 2 para 4(1), (4)). Where goods are bailed or hired under a hire-purchase agreement by a owner in the course of a business and the hirer expressly or by implication makes known (1) to the owner in the course of negotiations conducted by the owner in relation to the making of the hire-purchase agreement; or (2) to a credit-broker in the course of negotiations conducted by that broker in relation to goods sold by him to the owner before forming the subject matter of the hire-purchase agreement, any particular purpose for which the goods are being bailed or hired, there is an implied term that the goods supplied under the agreement are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied, except where the circumstances show that the person to whom the goods are bailed or hired does not rely, or that it is unreasonable for him to rely, on the skill or judgment of the owner or credit-broker: Supply of Goods (Implied Terms) Act 1973 s 10(3) (substituted by the Consumer Credit Act 1974 Sch 4 paras 35, 36; and amended by the Sale and Supply of Goods Act 1994 Sch 2 para 4(1), (4)).

8 See the Supply of Goods (Implied Terms) Act 1973 s 11 (substituted by the Consumer Credit Act 1974 Sch 4 paras 35, 36; and amended by the Sale and Supply of Goods Act 1994 Sch 2 para 4(1), (5)). Where under a hire-purchase agreement goods are bailed or hired by reference to a sample, there is an implied term (1) that the bulk will correspond with the sample in quality; (2) that the person to whom the goods are bailed or hired will have a reasonable opportunity of comparing the bulk with the sample; and (3) that the goods will be free from any defect making their quality unsatisfactory, which would not be apparent on reasonable examination of the sample: Supply of Goods (Implied Terms) Act 1973 s 11 (as so substituted and amended).

9 Ibid s 8(1)(b)(i) (substituted by the Consumer Credit Act 1974 Sch 4 paras 35, 36; and amended by the Sale and Supply of Goods Act 1994 Sch 2 para 4(1), (2)).

10 Supply of Goods (Implied Terms) Act 1973 s 8(1)(b)(ii) (substituted by the Consumer Credit Act 1974 Sch 4 paras 35, 36; and amended by the Sale and Supply of Goods Act 1994 Sch 2 para 4(1), (2)).

11 Supply of Goods (Implied Terms) Act 1973 s 8(2)(a) (substituted by the Consumer Credit Act 1974 Sch 4 paras 35, 36; and amended by the Sale and Supply of Goods Act 1994 Sch 2 para 4(1), (2)).

12 Supply of Goods (Implied Terms) Act 1973 s 8(2)(b) (substituted by the Consumer Credit Act 1974 Sch 4 paras 35, 36; and amended by the Sale and Supply of Goods Act 1994 Sch 2 para 4(1), (2)).

13 Where in the case of a hire-purchase agreement the person to whom goods are bailed would, apart from this provision have the right to reject the goods by reason of a breach on the part of the owner of a term implied by the Supply of Goods (Implied Terms) Act 1973 (ie bailing or hiring by description, implied undertakings as to quality or fitness for purpose, and hiring by reference to a sample) but the breach is so slight that it would be unreasonable for him to reject them, then, if the person to whom the goods are bailed does not deal as consumer, the breach is not to be treated as a breach of condition but may be treated as a breach of warranty: Supply of Goods (Implied Terms) Act 1973 s 11A(1) (s 11A added by the Sale and Supply of Goods Act 1994 Sch 2 para 4(1), (6)). This provision applies unless a contrary intention appears, or is to be implied from the agreement: Supply of Goods (Implied Terms) Act 1973 s 11A(2) (as so added). It is for the owner to show that the breach is slight and that the person to whom the goods were bailed did not deal as consumer: s 11A(3) (as so added). An express term in the hire-purchase agreement does not negative a term implied by the Supply of Goods (Implied Terms) Act 1973 unless inconsistent with it: s 12 (substituted by the Sale and Supply of Goods Act 1994 Sch 2 para 4(1), (7)). As to conditions and warranties see CONTRACT vol 9(1) (Reissue) para 993 post. As to dealing as a consumer see the Unfair Contract Terms Act 1977 s 12; and CONTRACT vol 9(1) (Reissue) para 832 post.

14 See the Unfair Contract Terms Act 1977; and CONTRACT vol 9(1) (Reissue) para 819 et seq post. As to the requirement of reasonableness see CONTRACT vol 9(1) (Reissue) para 831 post.

15 For the meaning of 'mercantile agent' see the Sale of Goods Act 1979 s 26; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) para 157.

16 See eg *Bishopsgate Motor Finance Corpn Ltd v Transport Brakes Ltd*[1949] 1 KB 322, [1949] 1 All ER 37, CA.

17 See the Hire-Purchase Act 1964 Pt III (ss 27-29) (as substituted); and paras 55-57 post.

UPDATE

22-25 Acceleration clauses ... In general

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

23-25 In general

Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(4) HIRE-PURCHASE/(iii) Rights and Duties at Common Law/25. In general.

(iii) Rights and Duties at Common Law

25. In general.

The duties of the parties are usually defined by the express terms of the agreement¹. In the absence of such express provisions, the common law steps in to fill the vacuum, and imposes a number of duties on parties to hire-purchase agreements².

1 See generally CONTRACT. In relation to regulated agreements the Consumer Credit Act 1974 imposes certain additional duties: see para 78 et seq post. For the meaning of 'regulated agreement' see para 79 post.

2 See paras 26-27 post.

UPDATE

22-25 Acceleration clauses ... In general

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

23-25 In general

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(4) HIRE-PURCHASE/(iii) Rights and Duties at Common Law/26. Obligations of the owner.

26. Obligations of the owner.

The owner has a duty to deliver the goods to the hirer at the address agreed upon¹. In the case of a specific chattel the owner is bound to keep it in the same state of repair as it was at the date of contract during the period between agreement and delivery². Bailment only begins when the hirer has been given possession³. During the existence of the contract, the owner is under a duty not to resume possession of the goods without good cause⁴. Except under an express stipulation, the owner is under no duty to keep the goods in repair during the currency of the agreement⁵.

1 See BAILMENT vol 3(1) (2005 Reissue) para 1.

2 See *Robertson v Amazon Tug and Lighterage Co* (1881) 7 QBD 598, CA; *Karsales (Harrow) Ltd v Wallis* [1956] 2 All ER 866 at 868, [1956] 1 WLR 936 at 940, CA, per Denning LJ.

3 See *National Cash Register Co v Stanley* [1921] 3 KB 292; and BAILMENT vol 3(1) (2005 Reissue) para 1.

4 An example of good cause to resume possession might be to execute repairs under the contractual obligation to repair. If the owner fails to return the goods as soon as reasonably possible, the hirer may maintain an action in conversion: *Roberts v Wyatt* (1810) 2 Taunt 268. As to actions in conversion see TORT.

5 See BAILMENT vol 3(1) (2005 Reissue) para 57.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(4) HIRE-PURCHASE/(iii) Rights and Duties at Common Law/27. Obligations of the hirer.

27. Obligations of the hirer.

It is the duty of the hirer to pay the instalments or rent agreed upon in respect of the bailment¹. In the absence of a term in the agreement more particularly defining his duty, the hirer is under a general obligation to take reasonable care of the goods² hired and is not liable for their loss or injury, unless it is caused by his negligence or that of someone for whom he is vicariously liable³, nor is he liable for damage caused by fair wear and tear⁴. If the goods are lost, damaged or destroyed when in the possession of the hirer, it is for him to show that the damage did not occur as a result of his neglect to use such care and diligence as a prudent, careful or reasonable man would exercise in relation to his own property⁵; and if he succeeds in showing this, he is not bound to show how or when the loss or damage occurred⁶. The hirer must not use the goods for any purpose other than that for which they were hired, and if he does so he will be responsible for any damage arising from such unauthorised use⁷. The negligent use of the goods by the hirer, or his employee acting within the scope of his authority, renders the hirer liable to third persons for injuries they may suffer in consequence of the negligence⁸. The hirer is not the owner's agent so as to render the owner liable in this connection⁹.

If the hirer does not exercise his option to purchase, he must deliver up the goods to the owner on the termination of the agreement. In the absence of an express term in the agreement to the contrary, this need not be at the owner's address provided that the hirer is willing to deliver on demand at his own address¹⁰. Failure to re-deliver on demand will amount to wrongful interference with goods¹¹. On re-delivery, in the absence of express stipulation, the goods must be in as good a condition as when received by the hirer, except for fair wear and tear¹². If, by reason of some cause for which the hirer is not responsible, it is impossible for him to return the goods, in the absence of a special condition in the contract he is excused from liability¹³.

1 Agreements usually prescribe the time and place of payment. As to bailment see generally BAILMENT.

2 *Tilling v Balmain* (1892) 8 TLR 517, DC. In the absence of an agreement to the contrary, the hirer is not liable to execute repairs other than those necessitated by his failure to take reasonable care of the goods: *Sutton v Temple* (1843) 12 M & W 52; *Hyman v Nye* (1881) 6 QBD 685.

3 See *Sanderson v Collins* [1904] 1 KB 628, CA; *Dean v Keate* (1811) 3 Camp 4; *Bray v Mayne* (1818) Gow 1; *Handford v Palmer* (1820) 2 Brod & Bing 359. As to vicarious liability see generally EMPLOYMENT; TORT.

4 See *Pomfret v Ricroft* (1671) 1 Wms Saund 321; *Blakemore v Bristol and Exeter Rly Co* (1858) 8 E & B 1035. These were cases of gratuitous loan, but it seems that the same principle should apply.

5 *Mackenzie v Cox* (1840) 9 C & P 632; *Reeve v Palmer* (1858) 5 CBNS 84, Ex Ch; *Phipps v New Claridge's Hotel* (1905) 22 TLR 49.

6 *Bullen v Swan Electric Engraving Company* (1907) 23 TLR 258, CA.

7 See *Burnard v Haggis* (1863) 14 CBNS 45; *Walley v Holt* (1876) 35 LT 631. In these cases the hirer, who had used a horse for an unauthorised purpose and injured it, was held liable in damages notwithstanding his minority on the ground that what had been done was an actionable wrong independent of contract. These were not cases of hire-purchase, but the same principle should apply.

8 *Smith v Bailey* [1891] 2 QB 403, CA. As to employers' liability for the acts of their employees see generally EMPLOYMENT; TORT.

9 *Smith v Bailey* [1891] 2 QB 403, CA; *Gibson v O'Keeney* [1928] NI 66, CA; *Britt v Galmoye and Nevill* (1928) 44 TLR 294. As to agency generally see AGENCY.

10 *Elsey & Co Ltd v Hyde* (1926) reported in Jones and Proudfoot's Notes on Hire-purchase Law (2nd Edition) 107 at 108-109, DC; cf *Thorogood v Robinson* (1845) 6 QB 769 at 772; *Clements v Flight* (1846) 16 M & W 42 at 49. See also *Capital Finance Co Ltd v Bray* [1964] 1 All ER 603 at 606, [1964] 1 WLR 323 at 328, CA, per Lord Denning MR.

11 As to wrongful interference with goods see TORT.

12 *Coupé Co v Maddick* [1891] 2 QB 413 at 415, DC, per Cave J; *Dollar v Greenfield* (1905) Times, 19 May.

13 Such a cause might be robbery with violence, theft without negligence on the part of the hirer or accidental fire: see *Taylor v Caldwell* (1863) 3 B & S 826 at 838 per Blackburn J; *Coggs v Bernard* (1703) 2 Ld Raym 909; *Cooper v Barton* (1810) 3 Camp 5n; *Sanderson v Collins* [1904] 1 KB 628, CA; *Verrall v Robinson* (1835) 2 Cr M & R 495; *Pillott v Wilkinson* (1864) 34 LJ Ex 22; *Wilson v Anderton* (1830) 1 B & Ad 450.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(4) HIRE-PURCHASE/(iv) Termination/28. Termination of agreement.

(iv) Termination

28. Termination of agreement.

A hire-purchase agreement¹ may be terminated², in the same way as any other contract³, in one of the following ways: (1) under the agreement itself⁴; (2) by performance⁵; (3) by subsequent agreement; (4) by notice at common law independent of the agreement⁶; (5) by acceptance by one party of the other's repudiation⁷; (6) by release⁸; (7) by waiver⁹; (8) by merger¹⁰; (9) by frustration¹¹; or (10) by effluxion of time¹².

1 As to the meaning of 'hire-purchase agreement' see para 23 ante. For the meaning of 'hire-purchase agreement' under the Consumer Credit Act 1974 see para 95 post.

2 Termination brings an existing agreement to an end. A party may be entitled to avoid an agreement ab initio by reason of such factors as mistake, undue influence, misrepresentation and minority: see CONTRACT. For hire-purchase agreements regulated by the Consumer Credit Act 1974 there are special provisions relating to termination: see para 251 et seq post.

3 For termination of contracts generally see CONTRACT.

4 The term providing for termination may be express or may arise by implication. Termination is often expressed to occur on the return of goods, on service of a notice of termination by either party, on breach by the hirer or on the bankruptcy of the hirer.

5 As to performance see CONTRACT vol 9(1) (Reissue) para 921 et seq post.

6 As to termination by notice at common law see CONTRACT.

7 See CONTRACT.

8 If one party has performed his obligations under the agreement, he can nonetheless release the other party from outstanding obligations: see CONTRACT.

9 See CONTRACT vol 9(1) (Reissue) para 1025 et seq post.

10 Where a owner takes from his debtor a security of a higher nature than that which he already possesses for his debt, his remedies on the minor security are merged in the higher security and are extinguished: see CONTRACT vol 9(1) (Reissue) para 1062 et seq post.

11 See CONTRACT vol 9(1) (Reissue) para 897 et seq post.

12 See CONTRACT vol 9(1) (Reissue) para 979 et seq post.

UPDATE

28-30 Termination of agreement ... Contractual remedies

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(4) HIRE-PURCHASE/(iv) Termination/29. Termination of hiring only.

29. Termination of hiring only.

Hire-purchase agreements¹ may expressly provide for termination of the hiring of goods without determining the agreement. In such circumstances, the hirer's right to possession of the goods comes to an end² (along with the hirer's obligation to pay hire-rent), but the remaining provisions of the agreement survive, so that the hirer may still be able to exercise his option to purchase by paying the balance due under the agreement. The hiring can be revived at a later stage and the hirer restored to possession of the goods without the need for further formalities³.

1 As to the meaning of 'hire-purchase agreement' see para 23 ante. For the meaning of 'hire-purchase agreement' under the Consumer Credit Act 1974 see para 95 post.

2 For hire-purchase agreements regulated by the Consumer Credit Act 1974 there are restrictions on the owner's right to recover possession: see para 263 et seq post.

3 *Smart Bros Ltd v Holt* [1929] 2 KB 303.

UPDATE

28-30 Termination of agreement ... Contractual remedies

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(4) HIRE-PURCHASE/(v) Owner's Remedies for Hirer's Breach/30. Contractual remedies.

(v) Owner's Remedies for Hirer's Breach

30. Contractual remedies.

The hire-purchase agreement¹ itself may contain express provisions giving the owner specified remedies in the event of default by the hirer. In general, the law gives effect to such express provisions².

The owner also has the benefit of general contractual remedies at common law³.

1 As to the meaning of 'hire-purchase agreement' see para 23 ante. For the meaning of 'hire-purchase agreement' under the Consumer Credit Act 1974 see para 95 post.

2 The Consumer Credit Act 1974 imposes substantial restrictions in regulated agreements on the owner's rights before taking action against the hirer or in relation to the goods: see para 234 post.

3 As to contractual remedies see CONTRACT.

UPDATE

28-30 Termination of agreement ... Contractual remedies

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(4) HIRE-PURCHASE/(v) Owner's Remedies for Hirer's Breach/31. Misrepresentation before the contract.

31. Misrepresentation before the contract.

Where an owner has been induced to enter into a hire-purchase agreement as the result of a fraudulent misrepresentation¹ by the hirer, he may rescind the contract², or claim damages³. Subsequent behaviour on the part of the owner may act as a bar to rescission⁴. The measure of damages is not contractual but is that of the tort of deceit, and so the general rule as to quantification of the damage is that the owner should be restored to the position he would have been in if the representation had not been made⁵.

Under the Misrepresentation Act 1967, where an owner enters into an agreement after a misrepresentation has been made to him by the hirer, and the misrepresentation has become a term of the agreement or the agreement has been performed, the owner may rescind the contract⁶. The hirer will be liable for damages unless he proves that he has reasonable grounds to believe, and did believe up to the time the contract was made, that the facts represented were true⁷. The measure of damages is as for fraudulent misrepresentation⁸.

A negligent misrepresentation or misstatement may give rise to a claim for damages in negligence. The onus lies on the owner to prove negligence and the measure of damages is the tortious measure⁹.

Where an innocent misrepresentation (that is, a representation which is neither fraudulent nor negligent) induces the owner to enter into an agreement, the owner is entitled to rescind the agreement¹⁰. There is no right to damages, but the court may award damages in lieu of rescission if it is equitable to do so¹¹.

If the misrepresentation is incorporated as a term of the contract and the term is a condition, then the owner can either rescind the agreement ab initio and claim restitution in integrum, terminate the contract and claim damages for breach of condition, or affirm the contract and claim damages¹².

1 See MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) paras 755-761.

2 As to rescission see MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) para 812.

3 See *Archer v Brown* [1985] QB 401; and MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) para 781 et seq.

4 As to the bars to rescission see MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) para 826 et seq.

5 See MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) para 805; TORT.

6 See the Misrepresentation Act 1967 s 2(1); and MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) para 817.

7 See *ibid* s 2(1); and *Royal Trust Ltd v Rogerson* [1991] 2 QB 297, [1991] 3 All ER 294, CA.

8 See MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) para 811.

9 As to negligent misrepresentation see MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) para 764 et seq.

10 As to innocent misrepresentation see MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) para 762 et seq.

11 See the Misrepresentation Act 1967 s 2(2); and MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) para 834.

12 See MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) para 784.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(4) HIRE-PURCHASE/(v) Owner's Remedies for Hirer's Breach/32. Renunciation before delivery.

32. Renunciation before delivery.

If the hirer expressly or impliedly renounces his obligations¹ under the agreement before the time for performance falls due, the owner may accept the hirer's renunciation, treat the agreement as terminated and sue for breach of contract². The measure of damages is the unpaid balance of the hire-purchase price less the value of the goods³, excluding any sum payable optionally by the hirer for the exercise of the right to purchase and less an appropriate sum to reflect accelerated payment⁴.

1 As to repudiation of contracts see CONTRACT vol 9(1) (Reissue) para 997 et seq post.

2 As to the right to elect in cases of anticipatory breach see CONTRACT vol 9(1) (Reissue) para 1005 post.

3 *Yeoman Credit Ltd v Waragowski* [1961] 3 All ER 145, [1961] 1 WLR 1124, CA.

4 *Yeoman Credit Ltd v McLean* [1962] 1 WLR 131, approved in *Overstone Ltd v Shipway* [1962] 1 All ER 52, [1962] 1 WLR 117, CA.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(4) HIRE-PURCHASE/(v) Owner's Remedies for Hirer's Breach/33. Refusal to accept delivery.

33. Refusal to accept delivery.

If the hirer refuses to accept delivery of the goods, the owner may sue for breach of contract or may elect to affirm the contract¹. If the owner sues, the measure of damages will be the same as for renunciation before delivery².

1 As to the right to elect in cases of breach or repudiation at the time of performance see CONTRACT vol 9(1) (Reissue) para 1004 post.

2 See para 32 ante.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(4) HIRE-PURCHASE/(v) Owner's Remedies for Hirer's Breach/34. Breach of agreement after delivery.

34. Breach of agreement after delivery.

If the hirer breaches the agreement after delivery of the goods, the owner may elect to affirm the agreement, sue for the hire-rent in arrears and seek damages for any particular loss arising from the breach¹. If the breach is so grave as to frustrate the commercial performance of the agreement² (or the term breached is a condition³), the owner may accept the repudiatory breach, terminate the agreement, and then sue for sums accrued and damages⁴.

1 As to the right to elect see CONTRACT. As to the measure of damages see *Hadley v Baxendale* (1854) 9 Exch 341; and DAMAGES.

2 As to frustration of a contract see CONTRACT vol 9(1) (Reissue) para 897 et seq post.

3 If under the agreement time of payment is declared to be of the essence, then any default in payment is a breach of condition: see *Lombard North Central plc v Butterworth* [1987] QB 527, [1987] 1 All ER 267, CA; and BAILMENT vol 3(1) (2005 Reissue) para 58.

4 See para 36 post; and CONTRACT.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(4) HIRE-PURCHASE/(v) Owner's Remedies for Hirer's Breach/35. Action in contract for re-delivery and/or damages.

35. Action in contract for re-delivery and/or damages.

Hire-purchase agreements¹ usually contain an express clause requiring the hirer to re-deliver the goods on termination of either the hiring or the agreement. If the hirer fails to re-deliver the goods, the owner may then bring an action to recover the goods, and for damages, founded on the hirer's breach of his contractual obligation².

1 As to the meaning of 'hire-purchase agreement' see para 23 ante. For the meaning of 'hire-purchase agreement' under the Consumer Credit Act 1974 see para 95 post.

2 See para 34 ante; and CONTRACT.

UPDATE

35-37 Action in contract for re-delivery and/or damages ... Action in conversion

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(4) HIRE-PURCHASE/(v) Owner's Remedies for Hirer's Breach/36. Damages, liquidated damages and penalties.

36. Damages, liquidated damages and penalties.

On a repudiatory breach of contract¹ by the hirer, the owner may terminate the hire-purchase agreement², repossess the goods, recover sums accrued under the agreement with any specified interest as a debt, and claim liquidated or unliquidated damages³, depending on whether or not the agreement contains a liquidated damages clause specifying the amount of damages payable or the method of their calculation.

If the agreement contains a liquidated damages clause, such a term will only be enforced if it is a genuine pre-estimate of damages and not a penalty⁴. If the clause is deemed a penalty, the owner may still recover as unliquidated damages the amount of the loss actually suffered⁵.

Where there is no liquidated damages clause in the contract, and the owner accepts the hirer's repudiatory breach or breach of condition⁶, the owner can recover as damages the future rentals less the net proceeds of sale of the repossessed goods, and less credit for accelerated receipt⁷. The owner must take reasonable steps to minimise his loss by selling the goods at a reasonable price⁸.

- 1 As to repudiation of contracts see para 34 ante; and CONTRACT vol 9(1) (Reissue)para 997 et seq post.
- 2 As to the meaning of 'hire-purchase agreement' see para 23 ante. For the meaning of 'hire-purchase agreement' under the Consumer Credit Act 1974 see para 95 post.
- 3 As to liquidated and unliquidated damages see DAMAGES. As to default and recovery under the Consumer Credit Act 1974 see para 263 et seq post.
- 4 See *Cooden Engineering Co Ltd v Stanford* [1953] 1 QB 86, [1952] 2 All ER 915, CA. For the distinction between liquidated damages and penalty clauses see *Dunlop Pneumatic Tyre Co Ltd v New Garage & Motor Co Ltd* [1915] AC 79, HL; and DAMAGES.
- 5 *Jobson v Johnson* [1989] 1 All ER 621, [1989] 1 WLR 1026. See also BAILMENT vol 3(1) (2005 Reissue) para 58.
- 6 As to repudiatory breach and breach of condition see para 34 ante; and CONTRACT.
- 7 *Yeoman Credit Ltd v Waragowski* [1961] 3 All ER 145, [1961] 1 WLR 1124, CA; *Yeoman Credit Ltd v McLean* [1962] 1 WLR 131; *Overstone Ltd v Shipway* [1962] 1 All ER 52, CA.
- Where hire-purchase agreements and conditional sale agreements are regulated by the Consumer Credit Act 1974, the owner may be entitled to less: see s 100; and para 258 post.
- 8 As to the duty to mitigate loss see CONTRACT vol 9(1) (Reissue) para 1006 post.

UPDATE

35-37 Action in contract for re-delivery and/or damages ... Action in conversion

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory

Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(4) HIRE-PURCHASE/(v) Owner's Remedies for Hirer's Breach/37. Action in conversion.

37. Action in conversion.

If the hirer wrongfully disposes of or destroys the owner's goods after the termination of the hire-purchase agreement¹, the owner may bring an action in conversion for the value of the goods as damages².

1 As to the meaning of 'hire-purchase agreement' see para 23 ante. For the meaning of 'hire-purchase agreement' under the Consumer Credit Act 1974 see para 95 post.

2 As to wrongful interference with goods and conversion see TORT.

UPDATE

35-37 Action in contract for re-delivery and/or damages ... Action in conversion

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(4) HIRE-PURCHASE/(v) Owner's Remedies for Hirer's Breach/38. Action in quasi-contract.

38. Action in quasi-contract.

If the hirer disposes of the goods without consent, the owner may instead of an action in conversion¹ bring an action in quasi-contract² for the proceeds of the sale of the goods received by the hirer³. This may be appropriate if the hirer has sold the goods for a higher price than their value.

1 See para 37 ante.

2 As to actions in quasi-contract see RESTITUTION vol 40(1) (2007 Reissue) para 1 et seq.

3 *Rodgers v Maw* (1846) 15 M & W 444.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(4) HIRE-PURCHASE/(v) Owner's Remedies for Hirer's Breach/39. Hirer's relief from forfeiture.

39. Hirer's relief from forfeiture.

On termination and forfeiture by the owner, a defaulting hirer may not at common law recover payments already made to the owner (whether initial deposits or instalments). He may, however, seek discretionary relief from forfeiture¹ and may recover some or all of the sums in exceptional circumstances².

1 As to relief from forfeiture see EQUITY vol 16(2) (Reissue) para 804.

2 See *Goker v NWS Bank plc* [1990] CCLR 34, (1990) Times, 23 May.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(4) HIRE-PURCHASE/(vi) Hirer's Remedies for Owner's Breach/40. Misrepresentation.

(vi) Hirer's Remedies for Owner's Breach

40. Misrepresentation.

The hirer has the same remedies for misrepresentation as the owner¹.

1 See para 31 ante; and MISREPRESENTATION AND FRAUD.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(4) HIRE-PURCHASE/(vi) Hirer's Remedies for Owner's Breach/41. Renunciation.

41. Renunciation.

If the owner renounces his obligations under the contract, the hirer may accept the renunciation and claim damages¹. He may elect to affirm the agreement and apply for an order for specific performance² or await performance of the owner's obligations³. If the owner refuses to discharge his obligations at the time for performance, the hirer may then treat the contract as discharged⁴.

1 As to renunciation see CONTRACT; DAMAGES.

2 As to specific performance generally see SPECIFIC PERFORMANCE.

3 See CONTRACT.

4 See CONTRACT.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(4) HIRE-PURCHASE/(vi) Hirer's Remedies for Owner's Breach/42. Failure to deliver.

42. Failure to deliver.

If the owner fails to deliver the goods, the hirer may elect either to treat the contract as discharged and sue for damages, or he may affirm the agreement¹, continue to fulfil his obligations under the agreement and treat the breach of the obligation to deliver as a breach of warranty².

1 As to the right to elect see CONTRACT.

2 As to breach of warranty and remedies for such a breach see CONTRACT.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(4) HIRE-PURCHASE/(vi) Hirer's Remedies for Owner's Breach/43. Defect in owner's title.

43. Defect in owner's title.

If the owner's title to the goods is defective, so that the option to purchase is unexercisable, the hirer may treat the consideration as having wholly failed¹, return the goods and sue in quasi-contract for the recovery of all sums paid². Alternatively, he may claim damages including the amount of all hire payments made³.

1 As to total failure of consideration see CONTRACT.

2 As to actions in quasi-contract see RESTITUTION vol 40(1) (2007 Reissue) para 1 et seq.

3 See *Warman v Southern Counties Car Finance Corp Ltd* [1949] 2 KB 576, [1949] 1 All ER 711. As to damages see DAMAGES.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(4) HIRE-PURCHASE/(vi) Hirer's Remedies for Owner's Breach/44. Breach of other terms.

44. Breach of other terms.

After repudiatory breach¹ of contract by the owner, the hirer may either treat the agreement as discharged and return the goods, recovering sums paid by the hirer and claiming damages, or affirm the contract and sue for breach of warranty².

1 As to repudiatory breach see CONTRACT vol 9(1) (Reissue) para 997 et seq post.

2 See CONTRACT.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(5) CONDITIONAL SALE/45. In general.

(5) CONDITIONAL SALE

45. In general.

A conditional sale agreement is an agreement for the sale of goods or land under which the purchase price or part of it is payable by instalments, and the seller retains title to the goods or land, notwithstanding that the buyer is to be in possession of the goods or land, until the price has been paid or some other stipulated condition has been performed¹. Such contracts are properly categorised as contracts of sale which are subject to a particular stipulation as to the time when title to the goods passes². Normally there will also be express provision for the seller to terminate the contract and take back the goods if the buyer defaults on his obligations. Unlike a hire-purchase agreement³, the purchaser is contractually bound to purchase the goods.

1 See eg *Lee v Butler*[1893] 2 QB 318, CA; *Hewison v Ricketts* (1894) 71 LT 191. For the meaning of 'conditional sale agreement' for the purposes of the Consumer Credit Act 1974 see para 93 post. For the meaning of 'conditional sale agreement' for the purposes of the statutory protection given to purchasers of motor vehicles in good faith and without notice of the agreement see para 55 note 3 post.

2 See the Sale of Goods Act 1979 s 17; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) para 109 et seq.

3 As to the meaning of 'hire-purchase agreement' see para 23 ante. For the meaning of 'hire-purchase agreement' under the Consumer Credit Act 1974 see para 95 post.

UPDATE

45-47 In general ... Rights of the seller

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(5) CONDITIONAL SALE/46. Statutorily implied terms and remedies.

46. Statutorily implied terms and remedies.

A conditional sale agreement is a contract of sale and the rights and liabilities of the parties are therefore subject to the provisions of the Sale of Goods Act 1979, particularly in respect of the inclusion of implied terms in favour of the buyer¹ and of default remedies available to the seller². The provision whereby in certain circumstances a breach of a condition in a contract of sale is treated only as a breach of warranty³ does not apply to a conditional sale agreement where the buyer deals as consumer⁴.

1 See the Sale of Goods Act 1979 ss 12-15 (as substituted and amended); and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) para 467.

2 See ibid Pt V (ss 38-50) (as amended); and SALE OF GOODS AND SUPPLY OF SERVICES.

3 Ie ibid s 11(4): see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) paras 63, 66.

4 See the Supply of Goods (Implied Terms) Act 1973 s 14(1) (substituted by the Consumer Credit Act 1974 s 192(3)(a), Sch 4 paras 35, 36; and amended by the Sale of Goods Act 1979 s 63, Sch 2 para 16; and the Unfair Contract Terms Act 1977 s 31(3), Sch 3). As to where the buyer deals as a consumer see the Unfair Contract Terms Act 1977 s 12; and CONTRACT vol 9(1) (Reissue) para 832 post.

A breach of a condition (whether express or implied) to be fulfilled by the seller under any such agreement is to be treated as a breach of warranty, and not as grounds for rejecting the goods and treating the agreement as repudiated, if (but only if) it would have fallen to be so treated had the condition been contained or implied in a corresponding hire-purchase agreement as a condition to be fulfilled by the owner: Supply of Goods (Implied Terms) Act 1973 s 14(2) (substituted by the Consumer Credit Act 1974 Sch 4 paras 35, 36). As to implied terms see para 24 ante. As to hire-purchase agreements see para 23 et seq ante.

UPDATE

45-47 In general ... Rights of the seller

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(5) CONDITIONAL SALE/47. Rights of the seller.

47. Rights of the seller.

If the seller exercises a right to terminate the agreement pursuant to a stipulation in his favour, he cannot then sue for the balance of the price as such. However, the seller can sue for all arrears and damages¹, including damages for loss of profit where the buyer's breach was, or under the agreement is deemed to be, repudiatory². The measure of damages will then be similar to that under a hire-purchase agreement³: the balance of future instalments less the net proceeds of sale, and credit for accelerated receipt⁴. The seller may sue on a clause for liquidated damages provided it is not a penalty⁵. The agreement may also provide for the seller, on default of the buyer to pay punctually, to accelerate payment of the balance of the purchase price, so long as the clause requires unaccrued charges to be rebated for accelerated receipt⁶. The seller is entitled to retain the full proceeds of sale of repossessed goods even where these exceed the conditional sale price, as the goods have at all times remained his property⁷.

1 A-G v Pritchard (1928) 97 LJKB 561; Taylor v Thompson [1930] WN 16, 169 LT Jo 101.

2 See *Financings Ltd v Baldock* [1963] 2 QB 104, [1963] 1 All ER 443, CA; *Lombard North Central plc v Butterworth* [1987] QB 527, [1987] 1 All ER 267, CA. As to repudiatory breach see CONTRACT vol 9(1) (Reissue) para 997 et seq post.

3 See para 36 ante.

4 See *Wadham Stringer Finance Ltd v Meaney* [1980] 3 All ER 789, [1981] 1 WLR 39, DC. As to default and recovery under the Consumer Credit Act 1974 see para 263 et seq post.

5 As to penalty clauses see CONTRACT; SALE OF GOODS AND SUPPLY OF SERVICES.

6 See *Wadham Stringer Finance Ltd v Meaney* [1980] 3 All ER 789, [1981] 1 WLR 39, DC.

7 See *Commission Car Sales (Hastings) Ltd v Saul* [1957] NZLR 144; *RV Ward Ltd v Bignal* [1967] 1 QB 534, [1967] 2 All ER 449, CA, overruling *Gallagher v Shilcock* [1949] 1 All ER 921. See also SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) para 282.

UPDATE

45-47 In general ... Rights of the seller

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(5) CONDITIONAL SALE/48. Passing of title.

48. Passing of title.

The buyer has no right to pass title to the goods before the completion of the agreement has vested the property in the goods in him¹, unless he has the consent of the seller². However, a bona fide purchaser will acquire good title where the seller has held the buyer out as being the owner or otherwise authorised to sell the goods³; or if the goods are sold by the buyer as mercantile agent⁴; or where the buyer disposes of a motor vehicle to a private purchaser who acts in good faith without notice of the conditional sale agreement⁵.

1 As to the rule 'nemo dat quod non habet' see SALE OF GOODS AND SUPPLY OF SERVICES. See also para 58 post.

2 If the owner gives consent to the sale, good title will be passed: see SALE OF GOODS AND SUPPLY OF SERVICES.

3 See *Lloyds and Scottish Finance Ltd v Williamson* [1965] 1 All ER 641, [1965] 1 WLR 404, CA; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) para 151.

4 See AGENCY vol 1 (2008) PARA 12.

5 As to the protection of purchasers of motor vehicles see paras 55-57 post. For the meaning of 'private purchaser' for these purposes see para 55 note 7 post.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(6) CREDIT-SALE/49. In general.

(6) CREDIT-SALE

49. In general.

A credit-sale agreement¹ is an agreement for the sale of goods under which the purchase price is payable by instalments but, unlike conditional sale², there is no retention of title by the seller until payment or some other condition is fulfilled. Title instead passes to the buyer as soon as the agreement is made.

1 For the meaning of 'credit-sale agreement' for the purposes of the Consumer Credit Act 1974 see para 93 post.

2 As to conditional sale agreements see paras 45-48 ante.

UPDATE

49-50 In general ... Implied terms

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

49 In general

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(6) CREDIT-SALE/50. Implied terms.

50. Implied terms.

As a credit-sale agreement is an agreement for the sale of goods, the rights and duties of the parties are subject to the Sale of Goods Act 1979, and the buyer has the benefit of the terms implied by that Act¹.

1 See SALE OF GOODS AND SUPPLY OF SERVICES.

UPDATE

49-50 In general ... Implied terms

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(6) CREDIT-SALE/51. Title.

51. Title.

Since title to the goods passes to the buyer as soon as the agreement is made¹, the buyer is free to resell or dispose of the goods, whether or not he has completed his payments.

1 See para 49 ante.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(7) CONTRACTS OF HIRE/52. In general.

(7) CONTRACTS OF HIRE

52. In general.

A hire agreement is a contract of bailment without any element of sale¹. The hirer receives both possession and use of the goods hired in return for rental paid to the lessor or owner. He is obliged to return the goods at the end of the agreed term². Unlike a hire-purchase agreement, there is no provision for title in the goods to pass under a hire agreement and the hirer has neither the right nor the power to dispose of the goods³. However, a third party may acquire good title from the hirer where the hirer has been held out as the owner or as the authorised agent of the owner, or where he disposes of the goods as a mercantile agent⁴.

1 See BAILMENT vol 3(1) (2005 Reissue) para 2 et seq.

2 See BAILMENT vol 3(1) (2005 Reissue) para 60.

3 See BAILMENT vol 3(1) (2005 Reissue) para 50.

4 See AGENCY vol 1 (2008) PARA 12.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(7) CONTRACTS OF HIRE/53. Implied terms.

53. Implied terms.

In a contract for hire, terms are implied by statute in favour of the hirer as to the right of the owner to transfer possession in the goods, quiet possession, correspondence with description, satisfactory quality, fitness for purpose, and correspondence with sample¹. Certain of these implied terms cannot be excluded or restricted, others may only be excluded or restricted as against a person not dealing as a consumer and to the extent that they satisfy the requirement of reasonableness². Terms as to payment of rent³, acceptance of delivery⁴, care of the goods⁵, user consistent with the terms of the hiring payment⁶ and re-delivery⁷ are imported in favour of the lessor.

1 See the Supply of Goods and Services Act 1982; and BAILMENT vol 3(1) (2005 Reissue) paras 53-57.

2 See the Unfair Contract Terms Act 1977; and CONTRACT vol 9(1) (Reissue) para 819 et seq post. As to the requirement of reasonableness see CONTRACT vol 9(1) (Reissue) para 831 post.

3 See BAILMENT vol 3(1) (2005 Reissue) para 58.

4 *National Cash Register Company Co v Stanley* [1921] 3 KB 292, DC.

5 *Tilling v Balmain* (1892) 8 TLR 517. The hirer is under an obligation to take reasonable care of the goods during bailment and is liable for his own negligence and that of his servants or agents, but not for that of third parties over whom he cannot reasonably be expected to exercise control: *Walker v British Guarantee Association* (1852) 18 QB 277.

6 The hirer must not use the goods for any purpose other than that for which they were hired and the hirer will be responsible in case of damage arising from their use for any other: *Edwards v Newland & Co (E Burchett Ltd, Third Parties)* [1950] 2 KB 534, [1950] 1 All ER 1072, CA.

7 *Mills v Graham* (1804) 1 Bos & PNR 140. See also BAILMENT vol 3(1) (2005 Reissue) para 60.

UPDATE

53 Implied terms

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(7) CONTRACTS OF HIRE/54. Owner's damages on hirer's default.

54. Owner's damages on hirer's default.

On non-payment or other default by the hirer which is repudiatory or a breach of condition under the agreement¹, the owner may terminate and claim all arrears and sums already due as well as damages to include future rentals less credit for accelerated receipt and, if appropriate, credit for accelerated return of the goods². A liquidated damages clause giving the owner no greater amount of damages will be upheld³.

1 If time of payment is of the essence and a condition under the agreement, that provision will be upheld: *Lombard North Central plc v Butterworth* [1987] QB 527, [1987] 1 All ER 267, CA. If the default is not repudiatory or a breach of condition, the owner cannot after termination claim future rentals: see *Financings Ltd v Baldock* [1963] 2 QB 104, [1963] 1 All ER 443, CA. As to repudiatory breach and breach of condition see CONTRACT.

2 See *Lombard North Central plc v Butterworth* [1987] QB 527, [1987] 1 All ER 267, CA; *Robophone Facilities Ltd v Blank* [1966] 3 All ER 128, [1966] 1 WLR 1428, CA; *Interoffice Telephones Ltd v Robert Freeman Co Ltd* [1958] 1 QB 190, [1957] 3 All ER 479, CA.

3 See *Lombard North Central plc v Butterworth* [1987] QB 527, [1987] 1 All ER 267, CA; *Robophone Facilities Ltd v Blank* [1966] 3 All ER 128, [1966] 1 WLR 1428, CA. As to liquidated damages see DAMAGES.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(8) PROTECTION FOR PURCHASERS OF MOTOR VEHICLES/55. Disposition to private purchaser.

(8) PROTECTION FOR PURCHASERS OF MOTOR VEHICLES

55. Disposition to private purchaser.

Special provisions apply where a motor vehicle¹ has been bailed under a hire-purchase agreement², or has been agreed to be sold under a conditional sale agreement³, and, before the property in the vehicle has become vested in the debtor⁴, he makes a disposition⁵ of the vehicle to another person⁶. If the debtor so disposes of the vehicle to a private purchaser⁷ who takes in good faith⁸ and without notice of the agreement⁹, the disposition has effect as if the creditor's¹⁰ title¹¹ had been vested in the hirer or buyer immediately before that disposition¹². The debtor will, however, be liable in conversion to the creditor¹³.

1 'Motor vehicle' means a mechanically propelled vehicle intended or adapted for use on roads to which the public has access: Hire-Purchase Act 1964 s 29(1) (substituted by the Consumer Credit Act 1974 s 192(3)(a), Sch 4 para 22). A motor car does not cease to fit this definition on the removal of the engine, if on the evidence the engine may shortly be replaced: see *Newberry v Simmonds*[1961] 2 QB 345, [1961] 2 All ER 318; and ROAD TRAFFIC vol 40(1) (2007 Reissue) para 211. Where, however, there is no reasonable prospect of a vehicle ever being made mobile again it ceases to be a 'mechanically propelled vehicle': see *Smart v Allan*[1963] 1 QB 291, [1962] 3 All ER 893; and ROAD TRAFFIC vol 40(1) (2007 Reissue) para 211.

2 For these purposes, 'hire-purchase agreement' means an agreement, other than a conditional sale agreement, under which (1) goods are bailed or hired in return for periodical payments by the person to whom they are bailed or hired; and (2) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following occurs: (a) the exercise of an option to purchase by that person; (b) the doing of any other specified act by any party to the agreement; or (c) the happening of any other specified events: Hire-Purchase Act 1964 s 29(1) (as substituted: see note 1 supra).

3 For these purposes, 'conditional sale agreement' means an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled: ibid s 29(1) (as substituted: see note 1 supra).

4 For these purposes, the 'debtor' in relation to a motor vehicle which has been bailed under a hire-purchase agreement or, as the case may be, agreed to be sold under a conditional sale agreement, means the person who at the material time (whether the agreement has before that time been terminated or not) is either (1) the person to whom the vehicle is bailed under that agreement; or (2) is, in relation to the agreement, the buyer, including a person who at the time is, by virtue of the Consumer Credit Act 1974 s 130(4) (see para 1004 ante) treated as a bailee of the vehicle: Hire-Purchase Act 1964 s 29(4) (substituted by the Consumer Credit Act 1974 Sch 4 para 22).

5 'Disposition' means any sale or contract of sale (including a conditional sale agreement), any bailment under a hire-purchase agreement and any transfer of the property in goods in pursuance of a provision in that behalf contained in a hire-purchase agreement, and includes any transaction purporting to be a disposition (as so defined), and 'dispose of' must be construed accordingly: Hire-Purchase Act 1964 s 29(1) (as substituted: see note 1 supra). A loan agreement may be a 'disposition' where it provides for title to a vehicle to pass to a creditor if a debtor defaults on repayments: see *Dodds v Yorkshire Bank Finance Ltd* [1992] CCLR 92, CA.

6 Hire-Purchase Act 1964 s 27(1) (substituted by the Consumer Credit Act 1974 Sch 4 para 22). The provisions contained in the Hire-Purchase Act 1964 s 27(2)-(4) (as substituted) apply notwithstanding anything in the Sale of Goods Act 1979 s 21 (sale of goods by person not the owner: see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) para 150), but without prejudice to the provisions of the Factors Act 1889 or of any other enactment enabling the apparent owner of goods to dispose of them as if he were the true owner: Hire-Purchase Act 1964 s 27(5) (substituted by the Consumer Credit Act 1974 Sch 4 para 22; and amended by the Sale of Goods Act 1979 s 63, Sch 2 para 4).

The provisions of the Hire-Purchase Act 1964 s 27 (as substituted and amended) do not exonerate the debtor from any liability (whether criminal or civil) to which he would otherwise be subject; nor, where the debtor disposes of the vehicle to a trade or finance purchaser, do they exonerate (1) that trade or finance purchaser; or (2) any other trade or finance purchaser who becomes a purchaser of the vehicle and is not a person claiming under the first private purchaser: s 27(6) (substituted by the Consumer Credit Act 1974 Sch 4 para 22). See *Barber v NWS Bank plc*, [1996] 1 All ER 906, [1996] 1 WLR 641, CA, where it was held to be fundamental to the transaction that the bank had property in the motor vehicle sold, on the terms of a conditional sale agreement, at the time of the agreement and that it would retain it until paid in full all money due under the agreement. For the meaning of 'trade or finance purchaser' see para 56 note 1 post; for the meaning of 'private purchaser' and as to the meaning of 'purchaser' see note 7 infra.

7 'Private purchaser' means a purchaser who, at the time of the disposition made to him, does not carry on any such business as is mentioned in para 56 note 1 post: Hire-Purchase Act 1964 s 29(2) (substituted by the Consumer Credit Act 1974 Sch 4 para 22). For the purposes of these provisions, a person becomes a purchaser of a motor vehicle if, and at the time when, a disposition of the vehicle is made to him: Hire-Purchase Act 1964 s 29(3) (substituted by the Consumer Credit Act 1974 Sch 4 para 22). An agreement where all the instalments have been paid off is not such an agreement. Therefore, a purchaser who is aware that the vehicle has been subject to such an agreement, but honestly and reasonably believes that the instalments have been paid off, is a purchaser without notice for the purposes of this provision: see *Barker v Bell*[1971] 2 All ER 867, [1971] 1 WLR 983, CA.

8 'Good faith' means honesty in fact: *Dodds v Yorkshire Bank Finance Ltd* [1992] CCLR 92, CA.

9 A person is taken to be a purchaser of a motor vehicle without notice of a hire-purchase agreement or conditional sale agreement if, at the time of the disposition made to him, he has no actual notice that the vehicle is or was the subject of any such agreement: Hire-Purchase Act 1964 s 29(3) (as substituted: see note 7 supra).

10 For these purposes, 'creditor' means the person by whom goods are bailed under a hire-purchase agreement or, as the case may be, the seller under a conditional sale agreement, or the person to whom his rights and duties have passed by way of assignment or operation of law: *ibid* s 29(1) (as substituted: see note 1 supra).

11 For the purposes of these provisions, any reference to the title of the creditor to a motor vehicle which has been bailed under a hire-purchase agreement, or agreed to be sold under a conditional sale agreement, and is disposed of by the debtor, is a reference to such title (if any) to the vehicle as, immediately before that disposition, was vested in the person who then was the creditor in relation to the agreement: *ibid* s 29(5) (substituted by the Consumer Credit Act 1974 Sch 4 para 22).

12 Hire-Purchase Act 1964 s 27(2) (substituted by the Consumer Credit Act 1974 Sch 4 para 22).

13 As to the tort of conversion see TORT.

UPDATE

55-59 Protection for Purchasers of Motor Vehicles ... Statutory exceptions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

55 Disposition to private purchaser

NOTE 6--See *Carlyle Finance Ltd v Pallas Industrial Finance*[1999] 1 All ER (Comm) 659, CA, applied in *Hitchens v General Guarantee Corp Ltd*[2001] All ER (D) 246 (Feb), CA.

NOTE 12--See *Shogun Finance Ltd v Hudson*[2003] UKHL 62, [2004] 1 All ER (Comm) 332 (sale to fraudster not sufficient to pass title: not true debtor under agreement).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(8) PROTECTION FOR PURCHASERS OF MOTOR VEHICLES/56. Disposition via trade or finance purchaser to private purchaser.

56. Disposition via trade or finance purchaser to private purchaser.

Where the debtor¹ disposes of a vehicle which has been bailed under a hire-purchase agreement² ('the relevant agreement') to a trade or finance purchaser³ ('the original purchaser') who then effects a disposition of it to a private purchaser⁴ ('the first private purchaser'), if the latter is a purchaser in good faith without notice of the relevant agreement, the disposition to him has effect as if the creditor's title had been vested in the original debtor immediately before he disposed of it to the original purchaser⁵. Where (1) the disposition to the first private purchaser is itself a bailment under a hire-purchase agreement; and (2) the creditor under that agreement disposes of the vehicle to the first private purchaser, or a person claiming under him, by transferring to him the property in the vehicle in pursuance of a provision in the agreement in that behalf, then both those dispositions take effect as if the original creditor's title had been vested in the original debtor immediately before he disposed of it to the original purchaser⁶. The transfer referred to in head (2) above takes effect whether or not the transferee is at that stage a purchaser in good faith and without notice of the relevant agreement⁷.

A trade or finance purchaser, however, enjoys no protection under these provisions. Where he disposes of goods of which he is not the owner, even if he acts in good faith, he is liable in conversion to the true owner⁸.

1 For the meaning of 'debtor' see para 55 note 4 ante.

2 For the meaning of 'hire-purchase agreement' for these purposes see para 55 note 2 ante.

3 'Trade or finance purchaser' means a purchaser who, at the time of the disposition made to him, carries on a business which consists wholly or partly (1) of purchasing motor vehicles for the purpose of offering or exposing them for sale; or (2) of providing finance by purchasing motor vehicles for the purpose of bailing them under hire-purchase agreements or agreeing to sell them under conditional sale agreements: Hire-Purchase Act 1964 s 29(2) (substituted by the Consumer Credit Act 1974 s 192(3)(a), Sch 4 para 22). Where a person carries on business as a trade purchaser he is not protected when he purchases a motor vehicle in his private capacity for his own use: *Stevenson v Beverley Bentinck Ltd* [1976] 2 All ER 606, [1976] 1 WLR 483, CA. The words 'carry on business' denote something of a permanent character, not merely an isolated transaction, and a business is carried on only where there is some degree of management or control: see *Brown v London and North Western Rly Co* (1863) 32 LJQB 318; *Graham v Lewis* (1888) 22 QBD 1, CA; *Cain v Butler* [1916] 1 KB 759 at 762 per Lush J; but contrast *Cornelius v Phillips* [1918] AC 199, HL; *Newman v Oughton* [1911] 1 KB 792; *Transport and General Credit Corp Ltd v Morgan* [1939] Ch 531, [1939] 2 All ER 17; *Re Brauch (a debtor), ex p Britannic Securities and Investments Ltd* [1978] Ch 316, [1978] 1 All ER 1004, CA; *Re Sarflax Ltd* [1979] Ch 592, [1979] 1 All ER 529.

4 For the meaning of 'private purchaser' see para 55 note 7 ante.

5 Hire-Purchase Act 1964 s 27(3) (substituted by the Consumer Credit Act 1974 Sch 4 para 22). The debtor will be liable in conversion to the creditor: see TORT.

6 Hire-Purchase Act 1964 s 27(4) (substituted by the Consumer Credit Act 1974 Sch 4 para 22).

7 Hire-Purchase Act 1964 s 27(4) (as substituted: see note 6 supra). This has the effect that, if the purchaser discovers the truth about the original disposition after he has entered into the hire-purchase agreement but before the property in the subject vehicle is transferred to him under that agreement, that knowledge will not vitiate that transfer.

8 As to the tort of conversion see TORT.

UPDATE

55-59 Protection for Purchasers of Motor Vehicles ... Statutory exceptions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(8) PROTECTION FOR PURCHASERS OF MOTOR VEHICLES/57. Presumptions.

57. Presumptions.

An ultimate purchaser may have to trace his title back through a number of transactions to establish that he has obtained title. For this reason, certain statutory presumptions¹ apply in any proceedings (whether criminal or civil) relating to a motor vehicle where it is proved (1) that the vehicle was bailed under a hire-purchase agreement² or was agreed to be sold under a conditional sale agreement³; and (2) that a person (whether a party to the proceedings or not) became a private purchaser⁴ of the vehicle in good faith without notice of the hire-purchase or conditional sale agreement ('the relevant agreement')⁵. The first presumption is that, unless the contrary is proved, the disposition⁶ of the vehicle to such a private purchaser ('the relevant purchaser') was made by the debtor⁷. If it is proved that the disposition was not made by the debtor, a second presumption applies, namely that unless the contrary is proved (a) the debtor disposed of the vehicle to a private purchaser acting in good faith without notice of the relevant agreement⁸; and (b) the relevant purchaser is or was a person claiming under the person to whom the debtor so disposed of the vehicle⁹. If the second presumption is rebutted by proof that the hirer or buyer disposed of the goods to a trade or finance purchaser¹⁰, a third presumption applies, namely that unless the contrary is proved the person who, after the disposition of the vehicle to the trade or finance purchaser, first became a private purchaser of the vehicle (i) did so in good faith and without notice of the relevant agreement¹¹; and (ii) is or was a person claiming under the trade or finance purchaser¹².

For the purposes of the operation of these presumptions, and without prejudice to any other method of proof, where in any proceedings a party thereto admits a fact, that fact must be taken as against him to be proved in relation to those proceedings¹³.

1 As to the effect and nature of presumptions generally see CIVIL PROCEDURE vol 11 (2009) PARA 1096 et seq. There is no room for the operation of these presumptions where the facts are known, or where the disposition to the final purchaser was a sham: *Soneco Ltd v Barcross Finance Ltd* [1978] RTR 444, CA.

2 For the meaning of 'hire-purchase agreement' for these purposes see para 55 note 2 ante.

3 Hire-Purchase Act 1964 s 28(1)(a) (substituted by the Consumer Credit Act 1974 s 192(3)(a), Sch 4 para 22). For the meaning of 'conditional sale agreement' for these purposes see para 55 note 3 ante.

4 For the meaning of 'private purchaser' see para 55 note 7 ante.

5 Hire-Purchase Act 1964 s 28(1)(b) (substituted by the Consumer Credit Act 1974 Sch 4 para 22).

6 For the meaning of 'disposition' see para 55 note 5 ante.

7 Hire-Purchase Act 1964 s 28(2) (substituted by the Consumer Credit Act 1974 Sch 4 para 22). For the meaning of 'debtor' see para 55 note 4 ante. Where a person who is controller of a group of companies, being managing director of each, disposes of a vehicle in respect of which one of the companies is a debtor under a hire-purchase agreement, he must be taken as acting on behalf of the debtor for the purposes of the application of these presumptions even if the disposition is for his own purposes or for those of another company in the group: *Ford Motor Credit Co Ltd v Harmack* (1972) Times, 7 July, CA.

8 Hire-Purchase Act 1964 s 28(3)(a) (substituted by the Consumer Credit Act 1974 Sch 4 para 22).

9 Hire-Purchase Act 1964 s 28(3)(b) (substituted by the Consumer Credit Act 1974 Sch 4 para 22).

10 For the meaning of 'trade or finance purchaser' see para 56 note 3 ante.

11 Hire-Purchase Act 1964 s 28(4)(a) (substituted by the Consumer Credit Act 1974 Sch 4 para 22).

12 Hire-Purchase Act 1964 s 28(4)(b) (substituted by the Consumer Credit Act 1974 Sch 4 para 22).

13 Hire-Purchase Act 1964 s 28(5) (substituted by the Consumer Credit Act 1974 Sch 4 para 22). As to the general rules relating to admissions in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARA 758 et seq. As to confessions in criminal proceedings see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1542 et seq.

UPDATE

55-59 Protection for Purchasers of Motor Vehicles ... Statutory exceptions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(9) EFFECT ON TITLE OF WRONGFUL DEALINGS/58. The general rule.

(9) EFFECT ON TITLE OF WRONGFUL DEALINGS

58. The general rule.

The general rule is that a seller cannot pass to a third party a better title to goods than he himself possesses¹. In the context of credit and hire transactions, this means that a hirer (whether under a contract of hire or hire-purchase agreement) or a buyer under a conditional sale agreement who has not performed the condition or conditions to the sale, cannot pass good title to the goods. The rule is subject to the special protection for purchasers of motor vehicles² and certain other exceptions³.

1 The rule is summarised in the maxim 'nemo dat quod non habet'. The rule is affirmed by the Sale of Goods Act 1979 s 21(1). See SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) para 150.

2 See paras 55-57 ante.

3 See the Sale of Goods Act 1979; and para 59 post.

UPDATE

55-59 Protection for Purchasers of Motor Vehicles ... Statutory exceptions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(9) EFFECT ON TITLE OF WRONGFUL DEALINGS/59. Statutory exceptions.

59. Statutory exceptions.

In addition to the special protection for purchasers of motor vehicles¹, there are a number of other exceptions to the general rule²: (1) estoppel³, where the true owner's conduct precludes him from denying the seller's authority to sell; (2) sales under the Factors Acts⁴; (3) sales under certain special powers of sale⁵; (4) sales under voidable title⁶; (5) sales where the seller, having sold the goods, is in possession after the sale; and (6) sales where the buyer, having bought or agreed to buy the goods, is in possession of them⁷.

1 See paras 55-57 ante.

2 As to the general rule see para 58 ante; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) para 150. These other exceptions are set out in the Sale of Goods Act 1979: see the text and note 7 infra.

3 As to estoppel generally see ESTOPPEL.

4 Ie the Factors Act 1889, the Factors (Scotland) Act 1890 and any amendment amending or substituted for the same: see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) paras 152, 157-158.

5 The special powers of sale include those of a pledgee or a sheriff pursuant to a writ of execution. As to pledgees see BAILMENT; PLEDGES AND PAWNS vol 36(1) (2007 Reissue) para 1 et seq. As to sheriffs see SHERIFFS.

6 See SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) paras 154-155.

7 See the Sale of Goods Act 1979; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) para 158.

UPDATE

55-59 Protection for Purchasers of Motor Vehicles ... Statutory exceptions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(9) EFFECT ON TITLE OF WRONGFUL DEALINGS/60. Tortious liability of third parties.

60. Tortious liability of third parties.

Where there is a wrongful disposition of goods by a person who has not obtained title to the goods¹, and no exception to the general rule applies², the third party who receives the goods will be liable to the true owner in the tort of conversion³. The third party need not know that the goods belong to someone else⁴, nor have any positive intention to challenge the true owner's rights⁵. Remedies for conversion include final or interlocutory orders for specific delivery of the goods to the owner, and damages⁶.

1 Such a person may be a hirer or buyer under a hire-purchase agreement or a conditional sale agreement: see paras 23 et seq, 45 et seq ante. As to the passing of title in goods generally see SALE OF GOODS AND SUPPLY OF SERVICES.

2 ie the rule that states that no person can give better title than he has himself: see para 58 ante. As to exceptions to the rule see paras 55-57, 59 ante.

3 As to the tort of conversion see TORT.

4 *Hollins v Fowler* (1875) LR 7 HL 757; *Neumann v Bakeaway Ltd* [1983] 2 All ER 935, [1983] 1 WLR 1016n, CA; *Observer Ltd v Gordon* [1983] 2 All ER 945, [1983] 1 WLR 1008. See also TORT.

5 *Caxton Publishing Co Ltd v Sutherland Publishing Co Ltd* [1939] AC 178 at 202, [1938] 4 All ER 389 at 404, HL, per Lord Porter.

6 See the Torts (Interference with Goods) Act 1977; and TORT. Damages may be awarded in addition to an order for specific delivery or as an alternative.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(10) UNFAIR CONTRACT TERMS/61. Unconscionable bargains.

(10) UNFAIR CONTRACT TERMS

61. Unconscionable bargains.

There is a long-established equitable jurisdiction to set aside harsh and unconscionable bargains¹. However, it is a power which is rarely invoked with success in modern times². Apart from this equitable remedy, there is no rule of law entitling a party to repudiate contractual terms because they are burdensome³.

1 See EQUITY vol 16(2) (Reissue) para 429.

2 The court's equitable jurisdiction was reviewed in *Multiservice Bookbinding Ltd v Marden*[1979] Ch 84, [1978] 2 All ER 489, in which the court refused to set aside an index-linked payment obligation in a mortgage. For a case in which a plaintiff successfully invoked the jurisdiction see *Cityland and Property Holdings Ltd v Dabrah*[1968] Ch 166, [1967] 2 All ER 639, in which the court adjusted a lender's rights to what it considered reasonable. See EQUITY vol 16(2) (Reissue) para 429.

3 See *Knightsbridge Estates Trust Ltd v Byrne*[1939] Ch 441, [1938] 4 All ER 618 (affd [1940] AC 613, [1940] 2 All ER 401, HL); *Alec Lobb (Garages) Ltd v Total Oil GB Ltd*[1985] 1 All ER 303, [1985] 1 WLR 173, CA.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(10) UNFAIR CONTRACT TERMS/62. Bankruptcy and extortionate credit transactions.

62. Bankruptcy and extortionate credit transactions.

Where a person is adjudged bankrupt and he is or has been a party to a transaction for, or involving, the provision to him of credit, the court may, on the application of the trustee of the bankrupt's estate, make an order with respect to the transaction if the transaction was extortionate and was not entered into more than three years before the commencement of the bankruptcy¹.

1 See the Insolvency Act 1986 s 343(1), (2); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) paras 672-675.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(10) UNFAIR CONTRACT TERMS/63. The Unfair Contract Terms Act 1977.

63. The Unfair Contract Terms Act 1977.

In many credit and hire agreements, the debtor or hirer is required to give representations that he has selected and examined goods before entering into the agreement and that he is satisfied with them. Such a provision will not override the terms implied by statute as to the vendor's title, entitlement to transfer of possession and quiet enjoyment¹, as these terms cannot be excluded in any circumstances². Moreover, as against a person dealing as a consumer³, liability for breach of the creditor's or owner's implied undertakings as to conformity of goods with description or sample, or as to their quality or fitness for a particular purpose⁴, cannot be excluded or restricted by reference to any contract term⁵. As against a non-consumer, any term that has such an effect is valid only in so far as it satisfies the requirement of reasonableness⁶.

Where one party to a contract deals as a consumer or on the other party's written standard terms of business, the other party cannot by any contract term (1) when himself in breach of contract, exclude or restrict any liability of his in respect of the breach; or (2) claim to be entitled to render a contractual performance substantially different from that which was reasonably expected of him or, in respect of the whole or any part of his contractual obligation, to render no performance at all, unless (in either case) the contract term satisfies the test of reasonableness⁷.

Where the Unfair Contract Terms Act 1977 prevents the exclusion or restriction of liability, it also prevents (a) making the liability or its enforcement subject to restrictive or onerous conditions; (b) excluding or restricting any right or remedy in respect of the liability, or subjecting a person to any prejudice in consequence of his pursuing any such right or remedy; and (c) excluding or restricting rules of evidence or procedure⁸.

1 See the Sale of Goods Act 1979 s 12 (as amended); and the Supply of Goods (Implied Terms) Act 1973 s 8(1) (as substituted). See also para 24 ante; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) para 69, 467.

2 See the Unfair Contract Terms Act 1977 s 6(1)(a), (b) (as amended); and CONTRACT vol 9(1) (Reissue) para 826 post.

3 As to where the buyer deals as a consumer see ibid s 12; and CONTRACT vol 9(1) (Reissue) para 832 post.

4 See para 24 ante.

5 See the Unfair Contract Terms Act 1977 s 6(2); and CONTRACT vol 9(1) (Reissue) para 826 post.

6 See ibid s 6(3); and CONTRACT vol 9(1) (Reissue) para 826 post.

7 See ibid s 3; and CONTRACT vol 9(1) (Reissue) para 823 post.

8 See ibid s 13; and CONTRACT vol 9(1) (Reissue) para 833 post.

UPDATE

63 The Unfair Contract Terms Act 1977

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(10) UNFAIR CONTRACT TERMS/64. The Unfair Terms in Consumer Contracts Regulations 1994.

64. The Unfair Terms in Consumer Contracts Regulations 1994.

The Unfair Terms in Consumer Contracts Regulations 1994¹ were passed in implementation of the EC Council Directive on unfair terms in consumer contracts². The regulations apply to any term in a contract³ between a seller⁴ or supplier⁵ and a consumer⁶ where the term has not been individually negotiated⁷. It is for the seller or supplier who claims that a term was individually negotiated to show that it was⁸.

An unfair term⁹ in such a contract is not binding on the consumer¹⁰, although the contract will continue to bind the parties if it is capable of continuing in existence without the unfair term¹¹.

The regulations contain an indicative and non-exhaustive list of the terms which may be regarded as unfair¹².

Sellers or suppliers must ensure that any written term of a contract is expressed in plain, intelligible language, and if there is doubt about the meaning of a written term, the interpretation most favourable to the consumer prevails¹³.

The Director General of Fair Trading¹⁴ is under a duty to consider complaints that any contract term drawn up for general use is unfair¹⁵; and may seek an injunction against any person using or recommending use of unfair terms in contracts concluded with consumers¹⁶.

The director is empowered to publish information or advice concerning the operation of the regulations¹⁷.

1 In the Unfair Terms in Consumer Contracts Regulations 1994, SI 1994/3159: see CONTRACT vol 9(1) (Reissue) para 790 et seq post.

2 In EC Council Directive 93/13 (OJ L95, 21.4.93, p 29).

3 The regulations do not apply to certain specified contracts: see the Unfair Terms in Consumer Contracts Regulations 1994, SI 1994/3159, reg 3(1), Sch 1; and CONTRACT vol 9(1) (Reissue) para 791 post.

4 'Seller' means a person who sells goods and is acting for purposes relating to his business: see *ibid* reg 2(1); and CONTRACT vol 9(1) (Reissue) para 791 post.

5 'Supplier' means a person who supplies goods or services and is acting for purposes relating to his business: see *ibid* reg 2(1); and CONTRACT vol 9(1) (Reissue) para 791 post.

6 'Consumer' means a natural person who is acting for purposes which are outside his business: see *ibid* reg 2(1); and CONTRACT vol 9(1) (Reissue) para 791 post.

7 See *ibid* reg 3(1). As to when a term will be regarded as not having been individually negotiated see reg 3(3); and CONTRACT vol 9(1) (Reissue) para 791 post.

8 See *ibid* reg 3(5); and CONTRACT vol 9(1) (Reissue) para 791 post.

9 'Unfair term' means any term which is contrary to the requirement of good faith and causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer: see *ibid* reg 4(1). As to the assessment of the unfair nature of a term see reg 4(3), Sch 2; and CONTRACT vol 9(1) (Reissue) para 793 post.

10 See *ibid* reg 5(1); and CONTRACT vol 9(1) (Reissue) para 795 post.

11 See *ibid* reg 5(2); and CONTRACT vol 9(1) (Reissue) para 795 post.

- 12 See *ibid* reg 4(4), Sch 3; and CONTRACT vol 9(1) (Reissue) para 794 post.
- 13 See *ibid* reg 6; and CONTRACT vol 9(1) (Reissue) para 792 post.
- 14 As to the Director General of Fair Trading see para 110 post.
- 15 See the Unfair Terms in Consumer Contracts Regulations 1994, SI 1994/3159, reg 8(1); and CONTRACT vol 9(1) (Reissue) para 796 post.
- 16 See *ibid* reg 8(2); and CONTRACT vol 9(1) (Reissue) para 796 post.
- 17 See *ibid* reg 8(7); and CONTRACT vol 9(1) (Reissue) para 796 post.
- Bulletins setting out the action taken by the director are available without charge from the Office of Fair Trading.

UPDATE

64 The Unfair Terms in Consumer Contracts Regulations [1999]

TEXT AND NOTES--SI 1994/3159 now Unfair Terms in Consumer Contracts Regulations 1999, SI 1999/2083.

NOTE 2--See Joined Cases C-240-244/98 *Océano Grupo Editorial SA v Murciano Quintero* [2002] 1 CMLR 1226, ECJ (exclusive jurisdiction clause unfair), applied in Case C-243/08 *Pannon GSM Zrt v Sustikné Győrfi* [2010] 1 All ER (Comm) 640, ECJ.

NOTE 3--SI 1994/3159 reg 3(1), Sch 1 now SI 1999/2083 reg 4(2).

NOTES 4, 5--'Seller or supplier' now means any natural or legal person who is acting for purposes relating to his trade, business or profession, whether publicly or privately owned: see *ibid* reg 3(1).

NOTE 6--'Consumer' now means any natural person who is acting for purposes which are outside his trade, business or profession: see *ibid* reg 3(1).

NOTE 7--SI 1994/3159 reg 3(1) now SI 1999/2083 reg 4(2). SI 1999/2083 applies in relation to unfair terms in contracts concluded between a seller or a supplier and a consumer: reg 4(2). SI 1994/3159 reg 3(3) now SI 1999/2083 reg 5(2).

NOTE 8--SI 1994/3159 reg 3(5) now SI 1999/2083 reg 5(4).

NOTE 9--SI 1994/3159 reg 4(1) now SI 1999/2083 reg 5(1).

NOTES 10, 11--SI 1994/3159 reg 5 now SI 1999/2083 reg 8.

NOTE 12--SI 1994/3159 reg 4(4), Sch 3 now SI 1999/2083 reg 5(5), Sch 2.

NOTE 13--SI 1994/3159 reg 6 now SI 1999/2083 reg 7.

NOTES 15-17--SI 1994/3159 reg 8 now SI 1999/2083 regs 11, 12. Consideration of complaints may now also be carried out by qualifying bodies (see Sch 1): reg 11.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(11) MISREPRESENTATION AND BREACH OF CONTRACT BY SUPPLIER/65. Creditor's liability for supplier's default.

(11) MISREPRESENTATION AND BREACH OF CONTRACT BY SUPPLIER

65. Creditor's liability for supplier's default.

Where credit is provided to finance the purchase or other supply of goods, the creditor may in some circumstances be liable for misrepresentation or breach of contract by the supplier. Apart from the important provisions of the Consumer Credit Act 1974¹, where the supplier is the creditor's agent at common law² the creditor is liable for the acts or omissions of the supplier to the extent of his actual or ostensible authority³. In respect of misrepresentation, this may make the creditor liable in damages to the debtor⁴, and such damages may be set off by the debtor against his debt to the creditor. Moreover, representations by the supplier may in this situation give the debtor a right to rescind the credit agreement, or may become terms of the agreement between debtor and creditor⁵.

1 Ie the Consumer Credit Act 1974 ss 56, 75 (liability of the creditor for breaches by the supplier): see paras 177, 250 post.

2 Such agency is rare. As to the formation of the relation of agency see AGENCY vol 1 (2008) PARA 14 et seq. As to agency see also paras 76-77 post.

3 As to an agent's authority see AGENCY vol 1 (2008) PARA 29 et seq.

4 See AGENCY vol 1 (2008) PARA 135. As to misrepresentation see MISREPRESENTATION AND FRAUD.

5 See AGENCY vol 1 (2008) PARA 135; MISREPRESENTATION AND FRAUD.

UPDATE

65-70 Creditor's liability for supplier's default ... The EC Council Directives relating to credit institutions and investment services

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(12) ADVERTISING/66. Statutory provisions.

(12) ADVERTISING

66. Statutory provisions.

In addition to the provisions of the Consumer Credit Act 1974 and regulations under it in relation to the advertising of credit facilities¹, there are many other statutes and regulations which may be relevant². Particular regard should be had to:

- 1 (1) the Consumer Transactions (Restrictions on Statements) Order 1976³, by which it is an offence to purport, in notices, advertisements or contract documents, to apply in relation to consumer sale and hire-purchase transactions, terms which are void under the Unfair Contract Terms Act 1977⁴, or to set out the supplier's obligations regarding quality, fitness or description of the goods⁵ without stating that the consumer's statutory rights are not affected;
- 2 (2) the Mail Order Transactions (Information) Order 1976⁶, which applies to advertisements (other than on radio or television or in cinemas) in which persons in the course of their business invite consumers to place pre-paid orders by post for goods. Such advertisements must contain the advertiser's name and business address in legible characters;
- 3 (3) the Business Advertisements (Disclosure) Order 1977⁷, which requires advertisements by sellers of goods in the course of business to indicate clearly that the goods are to be sold in the course of a business; and
- 4 (4) the Control of Misleading Advertisements Regulations 1988⁸, which empower the Director General of Fair Trading⁹ to apply for injunctions to restrain misleading advertisements.

1 As to the provisions of the Consumer Credit Act 1974 and regulations under it relating to advertising see para 143 et seq post.

2 See eg the Consumer Protection Act 1987; and SALE OF GOODS AND SUPPLY OF SERVICES.

3 Ie the Consumer Transactions (Restrictions on Statements) Order 1976, SI 1976/1813 (as amended): see COMPETITION.

4 Ie under the Unfair Contract Terms Act 1977 s 6 (as amended): see para 63 ante; and CONTRACT vol 9(1) (Reissue) para 826 post.

5 See para 24 ante.

6 Ie the Mail Order Transactions (Information) Order 1976, SI 1976/1812.

7 Ie the Business Advertisements (Disclosure) Order 1977, SI 1977/1918: see COMPETITION.

8 Ie the Control of Misleading Advertisements Regulations 1988, SI 1988/915 (as amended): see COMPETITION.

9 As to the Director General of Fair Trading see para 110 post.

UPDATE

65-70 Creditor's liability for supplier's default ... The EC Council Directives relating to credit institutions and investment services

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

66 Statutory provisions

NOTE 3--SI 1976/1813 lapsed (on repeal of Enterprise Act 2002 s 10(2) which contained savings in respect of repealed enabling legislation).

TEXT AND NOTE 6--SI 1976/1812 revoked: SI 2000/2334.

TEXT AND NOTE 7--SI 1977/1918 lapsed (on repeal of Enterprise Act 2002 s 10(2) which contained savings in respect of repealed enabling legislation).

TEXT AND NOTE 8--SI 1988/915 revoked: SI 2008/1277. See now Consumer Protection from Unfair Trading Regulations 2008, SI 2008/1277; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 725A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(12) ADVERTISING/67. Codes of advertising practice.

67. Codes of advertising practice.

The Independent Television Commission's Code of Advertising Standards and Practice imposes certain rules on financial advertisements on independent television and radio¹. Publishers have set up the Advertising Standards Authority, which also maintains a Code of Advertising Practice².

1 The code is produced pursuant to the Broadcasting Act 1990: see further TELECOMMUNICATIONS AND BROADCASTING.

2 See COMPETITION vol 47 (2009) PARA 337.

UPDATE

65-70 Creditor's liability for supplier's default ... The EC Council Directives relating to credit institutions and investment services

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

67 Codes of advertising practice

TEXT AND NOTES--Enabling legislation repealed: Enterprise Act 2002 Sch 26.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(13) DATA PROTECTION/68. Statutory protection.

(13) DATA PROTECTION

68. Statutory protection.

There are statutory provisions¹ governing the nature, use and protection of personal data². There is provision for compensation for individuals who suffer damage by reason of inaccuracy of data held by a data user, or for its loss or unauthorised disclosure³.

The information to be contained in personal data must be obtained fairly and lawfully. In practice, a creditor, a provider of hire services or a credit-broker requesting personal information of an individual, should inform the individual of all relevant matters including his statutory rights⁴.

1 See the Data Protection Act 1984; and CONFIDENCE AND DATA PROTECTION. At the date at which this volume states the law, there is a Bill under consideration which proposes the replacement of the Data Protection Act 1984 with similar provisions.

2 Cf the provisions of the Consumer Credit Act 1974 relating to disclosure of information by credit reference agencies: see paras 285-287 post. For the meaning of 'credit reference agency' see para 274 post.

3 See CONFIDENCE AND DATA PROTECTION.

4 See CONFIDENCE AND DATA PROTECTION. Such notification is frequently by way of a notice alongside the space for signature on credit application forms.

UPDATE

65-70 Creditor's liability for supplier's default ... The EC Council Directives relating to credit institutions and investment services

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(14) EUROPEAN LAW/69. The EC Consumer Credit Directive.

(14) EUROPEAN LAW

69. The EC Consumer Credit Directive.

The object of the EC Consumer Credit Directive¹ is the approximation of the laws, regulations and administrative provisions of the member states of the European Community concerning consumer credit. Some amendments to secondary legislation² in this country were needed to ensure compliance with the Directive, but it has not necessitated changes to the Consumer Credit Act 1974³, which in many areas goes further than the Directive requires. The Directive expressly permits member states to adopt more stringent provisions to protect the consumer⁴. The Directive applies to credit agreements⁵, and provides minimum requirements for (inter alia) the calculation of charges⁶, the form of agreements⁷, rebates for early settlement⁸, conditions for repossession⁹ and for the consumer to pursue remedies against the grantor of credit for default by the supplier of goods or services¹⁰. Member states are also required to control credit grantors by establishing a system of authorisation, monitoring their activities or establishing complaints, information and advice bodies¹¹.

1 The EC Council Directive 87/102 (OJ L42, 12.2.87, p 48) (as amended). As to the effect in domestic law of a Directive see EUROPEAN COMMUNITIES.

2 In particular, in relation to information which must be provided to consumers in respect of overdrafts.

3 As to the provisions of the Consumer Credit Act 1974 see para 78 et seq post.

4 See EC Council Directive 87/102 (OJ L42, 12.2.87, p 48) art 15.

5 'Credit agreements' are agreements whereby a creditor grants or promises to grant to a consumer credit in the form of a deferred payment, a loan or other similar financial accommodation: see *ibid* art 1(2)(c). A 'creditor' is a natural or legal person who grants credit in the course of his trade, business or profession, and a 'consumer' is a natural person who is acting for purposes outside his trade or profession: see art 1(2)(a), (b). Certain agreements are excluded from the scope of the Directive: see art 2(1). The Directive does not apply to credit agreements involving less than the specified amount: see art 2(1)(f).

6 See *ibid* art 1a.

7 See *ibid* art 4.

8 See *ibid* art 8.

9 See *ibid* art 7.

10 See *ibid* art 11(1).

11 See *ibid* art 12.

UPDATE

65-70 Creditor's liability for supplier's default ... The EC Council Directives relating to credit institutions and investment services

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4,

Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

69 The EC Consumer Credit Directive

TEXT AND NOTES--Directive 87/102 repealed and replaced from 12 May 2010 by European Parliament and EC Council Directive 2008/48 (OJ L133, 22.5.2008, p 66) on credit agreements for consumers.

NOTE 5--See Case C-208/98 *Berliner Kindl Brauerei AG v Siepert* [2001] All ER (EC) 673, ECJ (contract of guarantee did not fall within scope of Directive 87/102 by implication).

NOTE 10--See Case C-429/05 *Rampion v Franfinance SA* [2008] 1 CMLR 163, ECJ.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(14) EUROPEAN LAW/70. The EC Council Directives relating to credit institutions and investment services.

70. The EC Council Directives relating to credit institutions and investment services.

The First Council Directive of 12 December 1977¹ and the Second Council Directive of 15 December 1989² make provision for the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions³. The European provisions are implemented in the United Kingdom⁴ by the Banking Coordination (Second Council Directive) Regulations 1992⁵.

The Investment Services Directive⁶, which is the EC Council Directive on investment services in the securities field, is given effect by the Investment Services Regulations 1995⁷.

Both the Banking Coordination (Second Council Directive) Regulations 1992 and the Investment Services Regulations 1995 have the effect of modifying provisions of the Consumer Credit Act 1974⁸.

- 1 le EC Council Directive 77/780 (OJ L322, 17.12.77, p 30) (as amended): see EUROPEAN COMMUNITIES.
- 2 le EC Council Directive 89/646 (OJ L386, 30.12.89, p 1) (as amended): see EUROPEAN COMMUNITIES.
- 3 See FINANCIAL SERVICES AND INSTITUTIONS.
- 4 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706 preamble art 1; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). See further CONFLICT OF LAWS vol 8(3) (Reissue) para 4; CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 3; STATUTES vol 44(1) (Reissue) para 1383.
- 5 le the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218 (as amended).
- 6 le EC Council Directive 93/22 (OJ L141, 11.6.93, p 27): see EUROPEAN COMMUNITIES.
- 7 le the Investment Services Regulations 1995, SI 1995/3275 (as amended).
- 8 As to the provisions of the Consumer Credit Act 1974 see para 78 et seq post.

UPDATE

65-70 Creditor's liability for supplier's default ... The EC Council Directives relating to credit institutions and investment services

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

70 The EC Council Directives relating to credit institutions and investment services

TEXT AND NOTES--SI 1992/3218 and SI 1995/3275 revoked: SI 2001/3649.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(14) EUROPEAN LAW/71. Other provisions.

71. Other provisions.

Other EC Directives which may affect consumer credit business, but which are outside the scope of this volume, include those in the fields of advertising¹, doorstep sales², timeshares³, distance selling⁴ and financial services generally⁵.

1 See the Council Directive relating to the approximation of the laws, regulations and administrative provisions of the member states concerning misleading advertising, ie EC Council Directive 84/450 (OJ L250, 19.9.84, p 17); and EUROPEAN COMMUNITIES.

2 See the Council Directive to protect the consumer in respect of contracts negotiated away from business premises, ie EC Council Directive 85/577 (OJ L372, 31.12.85, p 31); and EUROPEAN COMMUNITIES.

3 See the Directive of the European Parliament and Council on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis, ie EC Council Directive 94/47 of the European Parliament and Council (OJ L280, 29.10.94, p 83); and EUROPEAN COMMUNITIES.

4 See the Directive of the European Parliament and Council on the protection of consumers in respect of distance contracts, ie EC Council Directive 97/7 of the European Parliament and Council (OJ L144, 4.6.97, p 19); and EUROPEAN COMMUNITIES.

5 See generally FINANCIAL SERVICES AND INSTITUTIONS.

UPDATE

71 Other provisions

NOTE 1--EC Council Directive 84/450 replaced: European Parliament and EC Council Directive 2006/114: see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 393 NOTE 6.

NOTE 3--EC Council Directive 94/47 replaced: European Parliament and EC Council Directive 2009/122: see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 393 NOTE 27.

NOTE 4--EC Council Directive 97/7 implemented by Consumer Protection (Distance Selling) Regulations 2000, SI 2000/2334 (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARAS 673-678).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(15) CODES OF PRACTICE/72. Trade associations' codes of practice.

(15) CODES OF PRACTICE

72. Trade associations' codes of practice.

Many trade associations have issued principles and guidelines which are relevant to the marketing of credit and hire services and are intended to govern the relations between their members and customers of their members¹.

Common provisions of these codes include: the requirement to use plain English in communications with customers; disclosure of specified information to customers; responsible and prudent marketing; the importance of ascertaining the ability of customers to pay; recommendations for dealing with customers in financial difficulties; provisions for the protection of confidential information; and complaints procedures. Some codes require members to ensure that customers (or sureties) have been advised to seek independent advice before entering into transactions. Some impose certain ethical standards on debt collection procedures.

¹ See eg the Codes of Practice of the Finance and Leasing Association, the Consumer Credit Trade Association and the Consumer Credit Association of the United Kingdom. The Banking Code is a voluntary code which sets minimum standards of good banking practice and is followed by banks and building societies which subscribe to it. The Code of Mortgage Lending Practice is a voluntary code followed by lenders in their relations with personal customers.

Copies of the codes can be obtained from the relevant institutions.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(16) RULES OF COURT/73. Procedural requirements.

(16) RULES OF COURT

73. Procedural requirements.

In any county court action arising out of a hire-purchase agreement, the plaintiff's claim must comply with the County Court Rules¹. These provide a list of matters which must be stated if the action is for delivery of goods let under a hire-purchase agreement to a person other than a body corporate², and a second list of matters to be stated for other claims arising out of hire-purchase agreements³. Any sums outstanding under the agreement should be specified without deduction of any rebate which may become due on early payment⁴.

The pleading requirements of mortgage actions in the county court are also set out in the County Court Rules⁵.

1 See CCR Ord 6 r 6. As to the enforcement of agreements regulated under the Consumer Credit Act 1974 see para 263 et seq post.

2 See CCR Ord 6 r 1(1).

3 See CCR Ord 6 r 1(2).

4 See *Forward Trust Ltd v Whymark*[1990] 2 QB 670, [1989] 3 All ER 915, CA.

5 See CCR Ord 6 rr 5, 5A.

UPDATE

73 Procedural requirements

TEXT AND NOTES--CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(17) TAX AND VAT/74. Accounting requirements.

(17) TAX AND VAT

74. Accounting requirements.

The Institute of Chartered Accountants in England and Wales and the Inland Revenue have made recommendations as to how hire-purchase and lease arrangements should be dealt with in accounts¹.

For the calculation of capital allowances², the hirer under a hire-purchase agreement is treated as the owner of the goods and can claim the appropriate writing down allowances³, but under a lease arrangement it is the lessor, as the owner, who is entitled to these allowances⁴.

1 Copies of the recommendations may be obtained from the Institute of Chartered Accountants and the Inland Revenue.

2 As to capital allowances see INCOME TAXATION vol 23(1) (Reissue) para 286 et seq.

3 See INCOME TAXATION vol 23(1) (Reissue) para 316.

4 See INCOME TAXATION vol 23(1) (Reissue) para 323.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(17) TAX AND VAT/75. Value added tax.

75. Value added tax.

The making of loans and the granting of credit are exempt from VAT, as are charges by credit or charge card companies to retailers who accept the cards, and annual card fees to customers¹. The same is true of credit granted in connection with the supply of goods, so long as separate charges, disclosed to the customer, are made for the goods and for the credit².

Option fees under hire-purchase agreements, documentation fees, arrangement fees and other fees under instalment sale agreements are exempt from VAT if they comply with specified requirements³.

The charges of credit-brokers, mortgage brokers and money brokers are exempt from VAT, subject to a number of conditions⁴.

Under leasing or hire agreements, where the consideration is paid periodically, VAT is payable. The tax point for each payment is the earlier of the issue of a VAT invoice or receipt of the rental payment⁵. However, where such agreements contain an option to purchase, the rental payments are exempt, as the agreements are in fact hire-purchase or lease purchase agreements⁶.

1 See VALUE ADDED TAX vol 49(1) (2005 Reissue) para 163.

2 See *Customs and Excise Comrs v Diners Club Ltd* [1989] 2 All ER 385, [1989] STC 407, CA; and VALUE ADDED TAX vol 49(1) (2005 Reissue) para 163. If the transaction is financed by a finance company which becomes the owner of the goods, the retailer's supply of goods to the finance company attracts value added tax, as does the finance company's supply of the goods to the customer, though the credit charges, if separate and disclosed, do not: see VALUE ADDED TAX vol 49(1) (2005 Reissue) para 94.

3 See VALUE ADDED TAX vol 49(1) (2005 Reissue) para 163.

4 See VALUE ADDED TAX vol 49(1) (2005 Reissue) para 163.

5 See VALUE ADDED TAX vol 49(1) (2005 Reissue) para 37.

6 See VALUE ADDED TAX vol 49(1) (2005 Reissue) para 163.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(18) AGENCY/76. The creditor as principal.

(18) AGENCY

76. The creditor as principal.

At common law, a creditor as principal¹ is bound by the acts of his agent² acting within actual, apparent or usual authority³. There is no general rule that a dealer through whom a hire-purchase⁴ or conditional sale agreement⁵ is concluded with a lender is the lender's agent⁶. The same analysis applies to a leasing agreement⁷.

1 For the meaning of 'principal' see AGENCY vol 1 (2008) PARA 1.

2 For the meaning of 'agent' see AGENCY vol 1 (2008) PARA 1.

3 As to an agent's authority to bind his principal see AGENCY vol 1 (2008) PARA 29 et seq.

4 As to hire-purchase agreements see para 23 et seq ante.

5 As to conditional sale agreements see paras 45-48 ante.

6 See *Mercantile Credit Co Ltd v Hamblin*[1965] 2 QB 242 at 269, [1964] 3 All ER 592 at 600-601, CA, per Pearson LJ; *Branwhite v Worcester Works Finance Ltd*[1969] 1 AC 552, [1968] 3 All ER 104, HL. See also *Purnell Secretarial Services Ltd v Lease Management Services Ltd* [1994] CCLR 127, CA. Contrast the position under the Consumer Credit Act 1974: see paras 176-178 post.

7 See *JD Williams & Co (t/a Williams Leasing) v McCauley Parsons & Jones* [1994] CCLR 78, CA; *Woodchester Equipment (Leasing) Ltd v British Association of Canned and Preserved Foods Importers and Distributors Ltd* [1995] CCLR 51, CA.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/2. THE COMMON LAW AND STATUTORY PROVISIONS OTHER THAN THE CONSUMER CREDIT ACT 1974/(18) AGENCY/77. The dealer as agent.

77. The dealer as agent.

A dealer through whom a hire-purchase¹ or conditional sale agreement² is concluded with a lender acts as an intermediary between the customer and the lender, and in particular circumstances may be acting as an agent when doing particular things on behalf of either or both parties³.

At common law, a dealer does not act as the lender's agent when making a representation which induces the customer to enter into a hire-purchase, conditional sale or leasing agreement⁴; nor is the dealer generally the lender's agent when taking a pre-contract deposit⁵.

The dealer has no ostensible authority⁶ to vary or terminate a hire-purchase agreement on the lender's behalf, nor to receive the customer's notice of termination. He will instead be the customer's agent for the purpose of communicating the notice of termination to the lender⁷.

The dealer does not acquire actual or apparent authority simply by virtue of having a master agreement with the lender, holding a stock of the lender's printed forms and having information about the lender's charges enabling him to complete agreement forms⁸. Nor does he become the lender's agent by virtue of receiving commission from the lender for the introduction of business⁹.

If a lender adopts a name and design calculated to mislead the customer into thinking that it is connected with the dealer it may be estopped from denying the dealer's authority in respect of representations made by the dealer in connection with a hire-purchase agreement¹⁰.

1 As to hire-purchase agreements see para 23 et seq ante.

2 As to conditional sale agreements see paras 45-48 ante.

3 For example, the dealer may be acting as agent when delivering a car to a hirer after a hire-purchase agreement has been concluded: see *Mercantile Credit Co Ltd v Hamblin* [1965] 2 QB 242 at 269, [1964] 3 All ER 592 at 601, CA, per Pearson LJ; *Branwhite v Worcester Works Finance Ltd* [1969] 1 AC 552, [1968] 3 All ER 104, HL.

4 See *Mercantile Credit Co Ltd v Hamblin* [1965] 2 QB 242, [1964] 3 All ER 592, CA; *Branwhite v Worcester Works Finance Ltd* [1969] 1 AC 552, [1968] 3 All ER 104, HL; *JD Williams & Co (t/a Williams Leasing) v McCauley Parsons and Jones* [1994] CCLR 78, CA; *Woodchester Equipment (Leasing) Ltd v British Association of Canned and Preserved Foods Importers and Distributors Ltd* [1995] CCLR 51, CA. Contrast the position under the Consumer Credit Act 1974: see paras 176-178 post.

5 See *Branwhite v Worcester Works Finance Ltd* [1969] 1 AC 552, [1968] 3 All ER 104, HL.

6 As to an agent's authority to bind his principal see AGENCY vol 1 (2008) PARA 29 et seq.

7 *Financings Ltd v Stimson* [1962] 3 All ER 386, [1962] 1 WLR 1184, CA, per Pearson LJ (dissenting); *Branwhite v Worcester Works Finance Ltd* [1969] 1 AC 552, [1968] 3 All ER 104, HL.

8 *Branwhite v Worcester Works Finance Ltd* [1969] 1 AC 552 at 557-558, [1968] 3 All ER 104 at 116, HL, per Lord Upjohn.

9 *Mercantile Credit Co Ltd v Hamblin* [1965] 2 QB 242 at 269, [1964] 3 All ER 592 at 600-601, CA, per Pearson LJ; *North Central Wagon and Finance Co v White and Powell* [1955] CLY 1204.

10 See *Purnell Secretarial Services Ltd v Lease Management Services Ltd* [1994] CCLR 127, CA. As to agency by estoppel see AGENCY vol 1 (2008) PARA 25.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(1) IN GENERAL/78. The scheme of classification.

3. CLASSIFICATION AND DEFINITIONS UNDER THE

(1) IN GENERAL

78. The scheme of classification.

Whether or not the Consumer Credit Act 1974 applies to any agreement, and the extent to which it applies, is determined by classification and definitions set out in Part II of the Act¹. An agreement is classified by reference to the parties to the agreement, its subject matter and the amount of credit involved².

The classification under the Act transcends previous legal distinctions and creates new categories of agreement for the purpose of implementing the statutory control.

1 Ie the Consumer Credit Act 1974 Pt II (ss 8-20) (as amended): see para 79 et seq post. Other definitions, some of which refer to Pt II (as amended), are set out in s 189(1) (as amended).

2 Most of the provisions of the Consumer Credit Act 1974 apply only to regulated agreements falling within the monetary limit: see paras 2 ante, 81-82 post. However, the provisions under which the court may reopen extortionate credit bargains (ie ss 137-140 (s 139 as amended): see paras 109, 269-270 post) apply regardless of the amount of credit provided and regardless of whether an agreement is regulated, provided that the debtor is an individual. For the meaning of 'debtor' see para 81 note 3 post; and for the meaning of 'individual' see para 80 note 1 post.

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(2) MAIN CLASSIFICATION OF AGREEMENTS/79. Regulated agreements.

(2) MAIN CLASSIFICATION OF AGREEMENTS

79. Regulated agreements.

A 'regulated agreement' is a consumer credit agreement¹ or consumer hire agreement² other than an exempt agreement³; and 'regulated' and 'unregulated' must be construed accordingly⁴.

- 1 For the meaning of 'consumer credit agreement' see para 81 post.
- 2 For the meaning of 'consumer hire agreement' see para 82 post.
- 3 See the Consumer Credit Act 1974 ss 8(3), 15(2); and paras 81-82 post. As to exempt agreements see para 99 et seq post.
- 4 Ibid s 189(1). An agreement made before 1 April 1977 is not a regulated agreement within the meaning of the Act: s 192(1), Sch 3 para 1(1) (amended by the Consumer Credit Act 1974 (Commencement No 2) Order 1977, SI 1977/325, art 2(1)).

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

79 Regulated agreements

NOTES--An agreement between an employer and an employee that she will be paid commission, and that in anticipation of the commission she will be paid a monthly advance, is not a contract for the provision of regulated credit: *McMillan Williams (a firm) v Range*[2004] EWCA Civ 294, [2004] All ER (D) 335 (Mar).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(2) MAIN CLASSIFICATION OF AGREEMENTS/80. Personal credit agreements.

80. Personal credit agreements.

A 'personal credit agreement' is an agreement between an individual¹, known as the debtor, and any other person², known as the creditor, by which the creditor provides the debtor with credit³ of any amount⁴.

1 'Individual' includes a partnership or other unincorporated body of persons not consisting entirely of bodies corporate: Consumer Credit Act 1974 s 189(1). See further s 188(1), Sch 2 Pt II examples 19, 24.

The requirement that the debtor must be an individual means that the statutory control imposed by the Consumer Credit Act 1974 does not apply to agreements made with corporate bodies.

2 'Person' is used here in contrast to 'individual' and includes any body having a legal personality, eg a corporation. See CORPORATIONS vol 9(2) (2006 Reissue) para 1101.

3 For the meaning of 'credit' see para 83 post.

4 Consumer Credit Act 1974 ss 8(1), 189(1). See further Sch 2 Pt II example 19.

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

80 Personal credit agreements

NOTE 1--'Individual' now includes a partnership consisting of two or three persons not all of whom are bodies corporate; and an unincorporated body of persons which does not consist entirely of bodies corporate and is not a partnership: 1974 Act s 189(1) (amended by the Consumer Credit Act 2006 s 1).

TEXT AND NOTE 4--In Consumer Credit Act 1974 s 8(1) for 'personal' read 'consumer': Consumer Credit Act 2006 s 2(1)(a). Definition of 'personal credit agreement' in Consumer Credit Act 1974 s 189(1) repealed: Consumer Credit Act 2006 Sch 4.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(2) MAIN CLASSIFICATION OF AGREEMENTS/81. Consumer credit agreements.

81. Consumer credit agreements.

A 'consumer credit agreement' is a personal credit agreement¹ by which the creditor² provides the debtor³ with credit not exceeding £25,000⁴. A consumer credit agreement is a regulated agreement⁵ if it is not an exempt agreement⁶.

A 'consumer credit business' means any business⁷ so far as it comprises or relates to the provision of credit under regulated consumer credit agreements⁸.

1 For the meaning of 'personal credit agreement' see para 80 ante.

2 'Creditor' means the person providing credit under a consumer credit agreement or the person to whom his rights and duties under the agreement have passed by assignment or operation of law, and, in relation to a prospective consumer credit agreement, includes the prospective creditor: Consumer Credit Act 1974 s 189(1). See further s 188(1), Sch 2 Pt II examples 1, 2, 3, 4. For the meaning of 'credit' see para 83 post.

3 'Debtor' means the individual receiving credit under a consumer credit agreement or the person to whom his rights and duties under the agreement have passed by assignment or operation of law, and, in relation to a prospective consumer credit agreement, includes the prospective debtor: ibid s 189(1).

4 Ibid ss 8(2), 189(1) (s 8(2) amended by the Consumer Credit (Increase of Monetary Limits) Order 1983, SI 1983/1878, art 4, Schedule Pt II; and by the Consumer Credit (Increase of Monetary Limits) (Amendment) Order 1998, SI 1998/996, art 2). See further the Consumer Credit Act 1974 Sch 2 Pt II examples 5, 6, 7, 10, 12, 15, 19, 21. As to the power to alter monetary limits see para 117 post.

'Consumer credit agreement' includes a consumer credit agreement which is cancelled under s 69(1) or becomes subject to s 69(2) (see para 185 post), so far as the agreement remains in force: see s 189(1).

5 For the meaning of 'regulated agreement' see para 79 ante.

6 Consumer Credit Act 1974 s 8(3). As to exempt agreements see s 16 (as amended); and para 99 et seq post.

7 'Business' includes profession or trade, and references to a business are subject to the qualification that a person may not be treated as carrying on a particular type of business merely because occasionally he enters into transactions belonging to a business of that type: ibid s 189(1), (2).

8 Ibid s 189(1).

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

81 Consumer credit agreements

TEXT AND NOTE 4--Consumer Credit Act 1974 s 8(2) repealed: Consumer Credit Act 2006 s 2(1)(b), Sch 4.

NOTE 4--See *National Westminster Bank plc v Story* (1999) Times, 14 May, CA (separate loan facilities, together exceeding the maximum amount for regulation and agreed and documented as one transaction, to be treated as one agreement and, therefore, not regulated).

TEXT AND NOTE 6--Consumer Credit Act 1974 s 8(3) amended: Consumer Credit Act 2006 s 5(1); SI 2008/2826.

TEXT AND NOTE 8--Definition of 'consumer credit business' substituted: Consumer Credit Act 1974 s 189(1) (amended by Consumer Credit Act 2006 s 23(a)).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(2) MAIN CLASSIFICATION OF AGREEMENTS/82. Consumer hire agreements.

82. Consumer hire agreements.

A 'consumer hire agreement' is an agreement made by a person¹ with an individual², known as the 'hirer'³, for the bailment⁴ of goods⁵ to the hirer, being an agreement which (1) is not a hire-purchase agreement⁶; (2) is capable of subsisting for more than three months⁷; and (3) does not require the hirer to make payments exceeding £25,000⁸. A consumer hire agreement is a regulated agreement⁹ if it is not an exempt agreement¹⁰.

A 'consumer hire business' means any business¹¹ so far as it comprises or relates to the bailment of goods under regulated consumer hire agreements¹².

1 The person who bails goods under a consumer hire agreement or the person to whom his rights and duties under the agreement have passed by assignment or operation of law is known as the 'owner'; and in relation to a prospective consumer hire agreement, 'owner' includes the prospective bailor: Consumer Credit Act 1974 s 189(1).

2 As to the meaning of 'individual' see para 80 note 1 ante. As to agreements with multiple parties see para 98 post.

3 'Hirer' means the individual to whom goods are bailed under a consumer hire agreement, or the person to whom his rights and duties under the agreement have passed by assignment or operation of law, and, in relation to a prospective consumer hire agreement, includes the prospective hirer: Consumer Credit Act 1974 s 189(1).

4 As to bailment generally see BAILMENT.

5 'Goods' includes all personal chattels other than things in action and money; and in particular 'goods' includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale, and includes an undivided share in goods: Sale of Goods Act 1979 s 61(1) (amended by the Sale of Goods (Amendment) Act 1995 s 2); Consumer Credit Act 1974 s 189(1) (amended by the Sale of Goods Act 1979 s 63, Sch 2 para 18). See SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) para 30.

6 Consumer Credit Act 1974 ss 15(1)(a), 189(1). See further s 188(1), Sch 2 Pt II example 20. For the meaning of 'hire-purchase agreement' see para 95 post.

7 Ibid ss 15(1)(b), 189(1). See further Sch 2 Pt II example 20.

8 Ibid ss 15(1)(c), 189(1) (s 15(1)(c) amended by the Consumer Credit (Increase of Monetary Limits) Order 1983, SI 1983/1878, art 4, Schedule Pt II; and by the Consumer Credit (Increase of Monetary Limits) (Amendment) Order 1998, SI 1998/996, art 2). See further the Consumer Credit Act 1974 s 188(1), Sch 2 Pt II examples 20, 24. As to hire payments see also *Apollo Leasing Ltd v Scott* 1984 SLT 90, Sh Ct (hire payment includes VAT). As to the power to alter monetary limits see para 117 post.

9 For the meaning of 'regulated agreement' see para 79 ante.

10 Consumer Credit Act 1974 s 15(2). As to exempt agreements see para 99 et seq post.

11 For the meaning of 'business' see para 81 note 7 ante.

12 Consumer Credit Act 1974 s 189(1). For the meaning of 'regulated' see para 79 ante.

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

82 Consumer hire agreements

NOTE 6--An agreement under which a person supplies a photocopier to a retailer who pays that person only an agreed rate per copy used by his customers is not a consumer hire agreement: *TRM Copy Centres (UK) Ltd v Lanwall Services Ltd* [2009] UKHL 35, [2009] 4 All ER 33.

TEXT AND NOTE 8--Head (3) omitted: Consumer Credit Act 2006 s 2(2), Sch 4.

TEXT AND NOTE 12--Definition of 'consumer hire business' substituted: Consumer Credit Act 1974 s 189(1) (amended by Consumer Credit Act 2006 s 23(b)).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(3) DEFINITION OF CREDIT/83. Credit.

(3) DEFINITION OF CREDIT

83. Credit.

'Credit' includes a cash¹ loan and any other form of financial accommodation². There is credit wherever there is deferment of a financial obligation. Credit is either running-account credit³ or fixed-sum credit⁴.

The person by whom goods⁵ are bailed to an individual⁶ under a hire-purchase agreement⁷ must be taken to provide him with fixed-sum credit to finance⁸ the transaction of an amount equal to the total price⁹ of the goods less the aggregate of the deposit¹⁰ (if any) and the total charge for credit¹¹.

An item entering into the total charge for credit is not to be treated as credit even though time is allowed for its payment¹².

1 'Cash' includes money in any form: Consumer Credit Act 1974 s 189(1). Where credit is provided otherwise than in sterling, it must be treated for the purposes of the Consumer Credit Act 1974 as provided in sterling of an equivalent amount: s 9(2).

2 Ibid ss 9(1), 189(1). See further s 188(1), Sch 2 Pt II examples 9, 16, 19, 21. This wide definition is not limited anywhere in the Consumer Credit Act 1974; and, in particular, there is no definition of financial accommodation.

3 For the meaning of 'running-account credit' see para 84 post.

4 For the meaning of 'fixed-sum credit' see para 85 post.

5 For the meaning of 'goods' see para 82 note 5 ante.

6 For the meaning of 'individual' see para 80 note 1 ante.

7 For the meaning of 'hire-purchase agreement' see para 95 post. As to bailment generally see BAILMENT.

8 'Finance' means to finance wholly or partly; and 'financed' and 'refinanced' must be construed accordingly: Consumer Credit Act 1974 s 189(1).

9 'Total price' means the total sum payable by the debtor under a hire-purchase agreement or a conditional sale agreement, including any sum payable on the exercise of an option to purchase, but excluding any sum payable as a penalty or as compensation or damages for a breach of the agreement: ibid s 189(1). See further Sch 2 Pt II example 10. For the meaning of 'debtor' see para 81 note 3 ante; and for the meaning of 'conditional sale agreement' see para 93 post. As to the total price see also *Mutual Finance Ltd v Davidson*[1963] 1 All ER 133, [1963] 1 WLR 134, CA (total price included the insurance premium).

10 'Deposit' means any sum payable by a debtor or hirer by way of deposit or down-payment, or credited or to be credited to him on account of any deposit or down-payment, whether the sum is to be or has been paid to the creditor or owner or any other person, or is to be or has been discharged by a payment of money or a transfer or delivery of goods, or by any other means: Consumer Credit Act 1974 s 189(1). See also *Branwhite v Worcester Works Finance Ltd*[1969] 1 AC 552, [1968] 3 All ER 104, HL. As to the meaning of 'other means' see eg *Kingsley v Sterling Industrial Securities Ltd*[1967] 2 QB 747, [1966] 2 All ER 414, CA. For the meaning of 'hirer' see para 82 note 3 ante; for the meaning of 'creditor' see 81 note 2 ante; and for the meaning of 'owner' see para 82 note 1 ante.

11 Consumer Credit Act 1974 s 9(3). See further Sch 2 Pt II example 10. As to the total charge for credit see paras 91, 224 et seq post.

12 Ibid s 9(4). See further Sch 2 Pt II example 19. As to the amount of credit see *Humberclyde Finance plc v Thompson* [1997] CCLR 23; *Huntpast Ltd v Leadbeater* [1993] CCLR 15, CA.

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

83 Credit

NOTE 10--Definition of 'deposit' amended: SI 2001/3649.

NOTE 12--See also *Southern Pacific Personal Loans Ltd v Walker*[2009] EWCA Civ 1176, [2009] All ER (D) 139 (Nov) (treatment of broker fee).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(3) DEFINITION OF CREDIT/84. Running-account credit.

84. Running-account credit.

'Running-account credit' is a facility under a personal credit agreement¹ whereby the debtor² is enabled to receive from time to time from the creditor³ or a third party cash, goods⁴ and services (or any of them) to an amount or value such that, taking into account payments⁵ made by or to the credit of the debtor, the credit limit⁶ (if any) is not at any time exceeded⁷.

In relation to the monetary limit⁸ within which the Consumer Credit Act 1974 applies, special provision is made for the case of running-account credit, which is to be taken as not exceeding the specified amount⁹:

- 5 (1) if the credit limit does not exceed the specified amount¹⁰; or
- 6 (2) whether or not there is a credit limit, and, if there is, notwithstanding that it exceeds the specified amount, if:

1

- 1. (a) the debtor is not enabled to draw at any one time an amount which, so far as it represents credit¹¹, exceeds the specified amount¹²; or
- 2. (b) the agreement provides that, if the debit balance rises above a given amount (not exceeding the specified amount), the rate of the total charge for credit¹³ increases or any other condition favouring the creditor or his associate¹⁴ comes into operation¹⁵; or
- 3. (c) at the time the agreement is made it is probable, having regard to the terms of the agreement and any other relevant considerations, that the debit balance will not at any time rise above the specified amount¹⁶.

2

1 For the meaning of 'personal credit agreement' see para 80 ante.

2 Ie in his own person or by another person: see the Consumer Credit Act 1974 s 10(1). For the meaning of 'debtor' see para 81 note 3 post.

3 For the meaning of 'creditor' see para 81 note 2 post.

4 For the meaning of 'goods' see para 82 note 5 ante.

5 'Payment' includes tender: Consumer Credit Act 1974 s 189(1).

6 In relation to running-account credit, 'credit limit' means, as respects any period, the maximum debit balance which, under the credit agreement, is allowed to stand on the account during that period, disregarding any term of the agreement allowing that maximum to be exceeded merely temporarily: ibid ss 10(2), 189(1). See further s 188(1), Sch 2 Pt II examples 6, 7, 19, 22, 23.

7 Ibid ss 10(1)(a), 189(1); and see Sch 2 Pt II examples 15, 16, 18, 19, 23.

8 As to the monetary limit see ibid s 8(2) (as amended); and paras 2, 81 ante.

9 Ie the amount specified as the monetary limit within which the Consumer Credit Act 1974 applies (currently £25,000): see note 8 supra.

10 See ibid s 10(3)(a). See further Sch 2 Pt II example 19.

11 Ie having regard to ibid s 9(4) (see para 83 ante): see s 10(3)(b)(i).

- 12 Ibid s 10(3)(b)(i). See further Sch 2 Pt II example 19.
- 13 As to the total charge for credit see paras 91, 224 et seq post.
- 14 As to associates see para 92 post.
- 15 Consumer Credit Act 1974 s 10(3)(b)(ii). See further Sch 2 Pt II examples 6, 19.
- 16 Ibid s 10(3)(b)(iii). See further Sch 2 Pt II examples 7, 19, 21. If an agreement contains a term signifying that in the opinion of the parties s 10(3)(b)(iii) does not apply to the agreement, it must be taken not to apply unless the contrary is proved: s 171(1).

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

84 Running-account credit

TEXT AND NOTES--Consumer Credit Act 1974 s 10(1), (3) amended: Consumer Credit Act 2006 s 5(2).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(3) DEFINITION OF CREDIT/85. Fixed-sum credit.

85. Fixed-sum credit.

'Fixed-sum credit' is any facility (other than such a facility as is referred to in the definition of running-account credit¹) under a personal credit agreement² whereby the debtor³ is enabled to receive credit⁴, whether in one amount or by instalments⁵.

- 1 See para 84 ante.
- 2 For the meaning of 'personal credit agreement' see para 80 ante.
- 3 For the meaning of 'debtor' see para 81 note 3 ante.
- 4 For the meaning of 'credit' see para 83 ante.
- 5 Consumer Credit Act 1974 ss 10(1)(b), 189(1). See further s 188(1), Sch 2 Pt II examples 9, 10, 17, 23.

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

85 Fixed-sum credit

TEXT AND NOTE 5--Consumer Credit Act 1974 s 10(1) amended: Consumer Credit Act 2006 s 5(2)(a).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(3) DEFINITION OF CREDIT/86. Restricted-use and unrestricted-use credit.

86. Restricted-use and unrestricted-use credit.

The Consumer Credit Act 1974 creates a distinction between two types of regulated agreement¹, based upon the purpose for which the credit² supplied under the agreement is available.

A 'restricted-use credit agreement' is a regulated consumer credit agreement³ (1) to finance⁴ a transaction between the debtor⁵ and the creditor⁶, whether forming part of that agreement or not⁷; or (2) to finance a transaction between the debtor and a person (the 'supplier') other than the creditor⁸; or (3) to refinance any existing indebtedness of the debtor, whether to the creditor or another person⁹.

An 'unrestricted-use credit agreement' is a regulated consumer credit agreement which is not within the definition of a restricted-use credit agreement¹⁰.

An agreement is not a restricted-use credit agreement if in fact the credit is provided in such a way as to leave the debtor free to use it as he chooses, even though certain uses would contravene that or any other agreement¹¹.

1 For the meaning of 'regulated agreement' see para 79 ante.

2 For the meaning of 'credit' see para 83 ante.

3 For the meaning of 'consumer credit agreement' see para 81 ante.

4 For the meaning of 'finance' see para 83 note 8 ante.

5 For the meaning of 'debtor' see para 81 note 3 ante.

6 For the meaning of 'creditor' see para 81 note 2 ante.

7 Consumer Credit Act 1974 ss 11(1)(a), 189(1).

8 Ibid ss 11(1)(b), 189(1). See also s 188(1), Sch 2 Pt II examples 12, 14, 16. An agreement may fall within s 11(1)(b) although the identity of the supplier is unknown at the time the agreement is made: s 11(4); and see Sch 2 Pt II example 14.

'Supplier' has the meaning given by s 11(1)(b) (see head (2) in the text) or s 12(c) (see para 87 text and note 14 post) or s 13(c) (see para 87 text and note 20 post) or, in relation to an agreement falling within s 11(1)(a) (see the text and note 7 supra), means the creditor; and 'supplier' includes a person to whom the rights and duties of a supplier (as so defined) have passed by assignment or operation of law, or, in relation to a prospective agreement, the prospective supplier: s 189(1). See further Sch 2 Pt II examples 3, 14.

9 Ibid ss 11(1)(c), 189(1). See also Sch 2 Pt II example 13. 'Restricted-use credit' must be construed in accordance with these provisions: see ss 11(1), 189(1). See further Sch 2 Pt II example 10.

10 See ibid ss 11(2), 189(1). See also Sch 2 Pt II examples 8, 12, 16, 17, 18, 21. 'Unrestricted-use credit' must be construed accordingly: see ss 11(2), 189(1).

11 Ibid s 11(3). See also Sch 2 Pt II examples 8, 12.

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(4) OTHER CATEGORIES OF AGREEMENT AND STATUTORY DEFINITIONS/87. Debtor-creditor and debtor-creditor-supplier agreements.

(4) OTHER CATEGORIES OF AGREEMENT AND STATUTORY DEFINITIONS

87. Debtor-creditor and debtor-creditor-supplier agreements.

There is a further distinction between different types of regulated agreement¹, which is based upon the function of the credit² supplied under the agreement.

A 'debtor-creditor-supplier agreement' is a regulated consumer credit agreement³ which is (1) a restricted-use credit agreement⁴ to finance a transaction between the debtor⁵ and the creditor⁶; or (2) a restricted-use credit agreement to finance a transaction between the debtor and a supplier⁷ other than the creditor⁸, made by the creditor under pre-existing arrangements⁹, or in contemplation of future arrangements¹⁰, between himself and the supplier¹¹; or (3) an unrestricted-use credit agreement¹² made by the creditor under pre-existing arrangements between himself and a person (the 'supplier'¹³) other than the debtor in the knowledge that the credit is to be used to finance a transaction between the debtor and the supplier¹⁴.

A 'debtor-creditor agreement' is a regulated consumer credit agreement which is (a) a restricted-use credit agreement to finance a transaction between the debtor and a supplier¹⁵ other than the creditor¹⁶ but which is not made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier¹⁷; (b) a restricted-use credit agreement to refinance any existing indebtedness of the debtor, whether to the creditor or another person¹⁸; or (c) an unrestricted-use credit agreement which is not made by the creditor under pre-existing arrangements between himself and a person ('the supplier'¹⁹) other than the debtor in the knowledge that credit is to be used to finance a transaction between the debtor and the supplier²⁰.

1 For the meaning of 'regulated agreement' see para 79 ante.

2 For the meaning of 'credit' see para 83 ante.

3 For the meaning of 'consumer credit agreement' see para 81 ante.

4 For the meaning of 'restricted-use credit agreement' see para 86 ante.

5 For the meaning of 'debtor' see para 81 note 3 ante.

6 Ie falling within the Consumer Credit Act 1974 s 11(1)(a) (see para 86 head (1) ante): ss 12(a), 189(1). For the meaning of 'creditor' see para 81 note 2 ante. In this case the creditor is also the supplier. As to the meaning of 'supplier' see para 86 note 8 ante. For the meaning of 'finance' see para 83 note 8 ante.

7 See para 86 note 8 ante.

8 Ie falling within the Consumer Credit Act 1974 s 11(1)(b) (see para 86 head (2) ante): see s 12(b).

9 As to pre-existing arrangements see para 96 post.

10 As to contemplation of future arrangements see para 96 post.

11 Consumer Credit Act 1974 ss 12(b), 189(1). See also s 188(1), Sch 2 Pt II examples 16, 21.

12 As to the meaning of 'unrestricted-use credit agreement' see para 86 ante.

- 13 See para 86 note 8 ante.
- 14 Consumer Credit Act 1974 ss 12(c), 189(1). See further Sch 2 Pt II example 8.
- 15 See para 86 note 8 ante.
- 16 le falling within the Consumer Credit Act 1974 s 11(1)(b) (see para 86 head (2) ante): see s 13(a).
- 17 Ibid ss 13(a), 189(1).
- 18 le which falls within ibid s 11(1)(c) (see para 86 head 3 ante): ss 13(b), 189(1).
- 19 See para 86 note 8 ante.
- 20 Consumer Credit Act 1974 ss 13(c), 189(1). See also Sch 2 Pt II examples 8, 16, 17, 18, 21. The effect of s 13 is that a debtor-creditor agreement is a regulated consumer credit agreement which is not a debtor-creditor-supplier agreement.

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(4) OTHER CATEGORIES OF AGREEMENT AND STATUTORY DEFINITIONS/88. Credit-tokens and credit-token agreements.

88. Credit-tokens and credit-token agreements.

A 'credit-token' is a card, check, voucher, coupon, stamp, form, booklet or other document or thing¹ given to an individual² by a person carrying on a consumer credit business³, who undertakes (1) that on the production of the credit-token⁴, whether or not some other action is also required, he will supply cash⁵, goods⁶ and services, or any of them, on credit⁷; or (2) that where, on production of the credit-token⁸ to a third party, whether or not any other action is also required, the third party supplies cash, goods and services, or any of them, he will pay the third party for them, whether or not deducting any discount or commission, in return for payment to him by the individual⁹.

'Credit-token agreement' means a regulated agreement for the provision of credit in connection with the use of a credit-token¹⁰. A credit-token agreement may fall within any of the categories of regulated agreement¹¹.

1 As to the form and content of such credit-tokens see para 116 post. For the meaning of 'credit' see para 83 ante. A cheque guarantee card is not included in the definition of credit-token, because payment to a person who accepted a cheque relying on the card is payment of the cheque guaranteed by it: see the Consumer Credit Act 1974 s 188(1), Sch 2 Pt II example 21. See also FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARAS 904, 905; CONTRACT vol 9(1) (Reissue) para 945 post. As to credit cards and check trading see also paras 18-19 ante.

2 As to the meaning of 'individual' see para 80 note 1 ante.

3 For the meaning of 'consumer credit business' see para 81 ante.

4 Use of an object (ie a credit-token) to operate a machine provided by the person giving the object or a third party is to be treated as the production of the object to him: Consumer Credit Act 1974 s 14(4).

5 For the meaning of 'cash' see para 83 note 1 ante.

6 For the meaning of 'goods' see para 82 note 5 ante.

7 Consumer Credit Act 1974 ss 14(1)(a), 189(1); and see Sch 2 Pt II example 16.

8 See note 4 supra.

9 Consumer Credit Act 1974 ss 14(1)(b), 189(1); and see Sch 2 Pt II examples 3, 14, 16, 21. The person who gives to an individual an undertaking falling within s 14(1)(b) is to be taken to provide him with credit drawn on whenever a third person supplies him with cash, goods or services: s 14(3). See further Sch 2 Pt II example 22. As to the meaning of 'payment' see para 84 note 5 ante.

As to credit-tokens see also *Elliott v Director General of Fair Trading* [1980] 1 WLR 977, [1980] ICR 629, DC.

It is an offence to give a person a credit-token if he has not asked for it: see the Consumer Credit Act 1974 s 51; and para 154 post.

10 Ibid ss 14(2), 189(1). See further Sch 2 Pt II examples 3, 14, 16, 22. For the meaning of 'regulated agreement' see para 79 ante. As to the liability of a debtor under a credit-token agreement see s 66; and para 170 post. For the meaning of 'debtor' see para 81 note 3 ante. As to the onus of proof in proceedings brought by a creditor under a credit-token agreement see s 171(4); and para 302 note 2 post.

As to credit-token agreements see also *Re Charge Card Services Ltd* [1989] Ch 497, [1988] 3 All ER 702, CA (debtor's payment by credit card is absolute and not merely conditional); *R v Lambie* [1982] AC 449, [1981] 2 All ER 776, HL (when paying for goods by credit card the debtor represents that he has actual authority of the creditor); *Metropolitan Police Comr v Charles* [1977] AC 177 [1976] 3 All ER 112, HL; *Customs and Excise Comrs v Diners Club Ltd* [1989] 2 All ER 385, [1989] 1 WLR 1196, CA.

11 ie it may be a restricted-use credit agreement (see para 86 ante), an unrestricted-use credit agreement (see para 86 ante), a debtor-creditor-supplier agreement (see para 87 ante) or a debtor-creditor agreement (see para 87 ante). See also para 108 post (small agreements), and paras 89, 190 post (multiple agreements).

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(4) OTHER CATEGORIES OF AGREEMENT AND STATUTORY DEFINITIONS/89. Multiple agreements.

89. Multiple agreements.

Certain agreements may fall within two or more of the categories mentioned in the Consumer Credit Act 1974¹, or may have a part falling into one category and another part falling into a different category or not falling into a category at all. Such agreements, which are known as 'multiple agreements'², are dealt with fully elsewhere in this title³.

- 1 As to the categories see paras 2, 78 et seq ante.
- 2 For the meaning of 'multiple agreements' see the Consumer Credit Act 1974 s 18; and para 190 post.
- 3 See para 190 post.

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(4) OTHER CATEGORIES OF AGREEMENT AND STATUTORY DEFINITIONS/90. Linked agreements.

90. Linked agreements.

Certain transactions which are associated with an actual or prospective regulated agreement¹, but which would otherwise not attract the provisions of the Consumer Credit Act 1974, are known as 'linked transactions'², and are subject to statutory regulation³. Such transactions are dealt with fully elsewhere in this title⁴.

- 1 For the meaning of 'regulated agreement' see para 79 ante.
- 2 For the meaning of 'linked transaction' see the Consumer Credit Act 1974 s 19; and para 196 post. Transactions for the provision of security are not linked transactions: see s 19(1); and para 196 post.
- 3 Ie under the Consumer Credit Act 1974.
- 4 See paras 196-198 post.

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(4) OTHER CATEGORIES OF AGREEMENT AND STATUTORY DEFINITIONS/91. Total charge for credit.

91. Total charge for credit.

The true cost to the debtor¹ of the credit² provided or to be provided under an actual or prospective consumer credit agreement³ is known as the 'total charge for credit'⁴. What items are to be treated as entering into the total charge for credit and how their amount is to be ascertained, and the method for calculating the rate of the total charge for credit, are dealt with elsewhere in this title⁵.

- 1 For the meaning of 'debtor' see para 81 note 3 ante.
- 2 For the meaning of 'credit' see para 83 ante.
- 3 For the meaning of 'consumer credit agreement' see para 81 ante.
- 4 See the Consumer Credit Act 1974 s 20; and para 224 post.
- 5 See para 224 et seq post.

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(4) OTHER CATEGORIES OF AGREEMENT AND STATUTORY DEFINITIONS/92. Associates.

92. Associates.

A person is an associate of an individual¹ if that person is the individual's husband or wife, or is a relative², or the husband or wife of a relative, of the individual or of the individual's husband or wife³. A person is an associate of any person with whom he is in partnership, and of the husband or wife or a relative of any individual with whom he is in partnership⁴.

A body corporate is an associate of another body corporate (1) if the same person is a controller⁵ of both, or a person is a controller of one and persons who are his associates, or he and persons who are his associates, are controllers of the other⁶; or (2) if a group of two or more persons is a controller of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he is an associate⁷. A body corporate is an associate of another person if that person is a controller of it, or if that person and persons who are his associates together are controllers of it⁸.

The concept of 'associate' is relevant in relation to (a) defining a controller⁹; (b) determining the fitness of an applicant to hold a standard licence¹⁰; (c) linked transactions¹¹; (d) the right of a hirer¹² to terminate a consumer hire agreement¹³; and (e) arrangements between creditor and supplier¹⁴.

1 'Individual' is defined in the Consumer Credit Act 1974 s 189(1) as including a partnership, but it seems that in s 184 'individual' is used in contradistinction to a partnership or body corporate. As to the meaning of 'individual' generally see para 80 note 1 ante. For the meaning of 'partnership' see PARTNERSHIP vol 79 (2008) PARA 1. As to bodies corporate see COMPANIES; CORPORATIONS.

2 In ibid s 184, 'relative' means brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant, and references to a husband or wife include a former husband or wife and a reputed husband or wife; and for these purposes a relationship is established as if any illegitimate child, step-child or adopted child of a person had been a child born to that person in wedlock: see s 184(5). As to the meaning of 'relative' generally see para 116 note 12 post.

3 Ibid ss 184(1), 189(1).

4 Ibid s 184(2).

5 In relation to a body corporate, 'controller' means a person (1) in accordance with whose directions or instructions the directors of the body corporate or of another body corporate which is its controller (or any of them) are accustomed to act; or (2) who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, one-third or more of the voting power at any general meeting of the body corporate or of another body corporate which is its controller: ibid s 189(1).

6 Ibid s 184(3)(a).

7 Ibid s 184(3)(b).

8 Ibid s 184(4).

9 See note 5 supra.

10 As to the issue of standard licences see para 127 post. For the meaning of 'standard licence' see para 122 post.

11 As to linked transactions see paras 90 ante, 196-198 post.

12 For the meaning of 'hirer' see para 82 note 3 post.

13 As to the right to terminate a consumer hire agreement see para 259 post. For the meaning of 'consumer hire agreement' see para 82 ante.

14 As to arrangements between creditor and supplier see para 96 post. For the meaning of 'creditor' see para 81 note 2 ante; and for the meaning of 'supplier' see para 86 note 8 ante.

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

92 Associates

NOTE 2--Consumer Credit Act 1974 s 184(5) amended: Civil Partnership Act 2004 Sch 27 para 51(4), Sch 30; SI 2005/3129.

TEXT AND NOTE 3--A person is an associate of an individual if that person is (1) the individual's husband or wife or civil partner, (2) a relative of (a) the individual, or (b) the individual's husband or wife or civil partner, or (3) the husband or wife or civil partner of a relative of (i) the individual, or (ii) the individual's husband or wife or civil partner: Consumer Credit Act 1974 s 184(1) (substituted by 2004 Act Sch 27 para 51(2)). See further MATRIMONIAL AND CIVIL PARTNERSHIP LAW.

TEXT AND NOTE 4--Consumer Credit Act 1974 s 184(2) amended: 2004 Act Sch 27 para 51(3).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(4) OTHER CATEGORIES OF AGREEMENT AND STATUTORY DEFINITIONS/93. Conditional sale agreements and credit-sale agreements.

93. Conditional sale agreements and credit-sale agreements.

'Conditional sale agreement' means an agreement for the sale of goods¹ or land² under which the purchase price or part of it is payable by instalments, and the property in the goods or land is to remain in the seller, notwithstanding that the buyer is to be in possession of the goods or land, until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled³.

'Credit-sale agreement' means an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, but which is not a conditional sale agreement⁴.

1 For the meaning of 'goods' see para 82 note 5 ante.

2 'Land' includes an interest in land: Consumer Credit Act 1974 s 189(1).

3 Ibid s 189(1). See also *Starside Properties Ltd v Mustapha* [1974] 2 All ER 567, [1974] 1 WLR 816, CA.

4 Consumer Credit Act 1974 s 189(1). See further s 188(1), Sch 2 Pt II example 5.

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(4) OTHER CATEGORIES OF AGREEMENT AND STATUTORY DEFINITIONS/94. Credit-broker and credit brokerage.

94. Credit-broker and credit brokerage.

A credit-broker is a person carrying on a business¹ of credit brokerage², which is the effecting of introductions of individuals³ desiring to obtain credit⁴ or to obtain goods on hire⁵ to certain persons⁶. Credit brokerage is dealt with fully elsewhere in this title⁷.

- 1 For the meaning of 'business' see para 81 note 7 ante.
- 2 See the Consumer Credit Act 1974 s 189(1). For the meaning of 'credit brokerage' see para 272 post.
- 3 For the meaning of 'individual' see para 80 note 1 ante.
- 4 For the meaning of 'credit' see para 83 ante.
- 5 As to consumer hire agreements see para 82 ante; and as to hire-purchase agreements see para 95 post. For the meaning of 'goods' see para 82 note 5 ante.
- 6 As to the relevant persons see para 272 post.
- 7 See para 272 post.

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(4) OTHER CATEGORIES OF AGREEMENT AND STATUTORY DEFINITIONS/95. Hire-purchase agreements.

95. Hire-purchase agreements.

'Hire-purchase agreement' means an agreement, other than a conditional sale agreement¹, under which (1) goods² are bailed in return for periodical payments by the person to whom they are bailed³; and (2) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following occurs:

- 7 (a) the exercise of an option to purchase by that person;
- 8 (b) the doing of any other specified act by any party to the agreement; or
- 9 (c) the happening of any other specified event⁴.

For the avoidance of doubt it is expressly stated that the person by whom goods are bailed to an individual⁵ under a hire-purchase agreement is to be taken to provide that individual with fixed-sum credit⁶ to finance⁷ the transaction of an amount equal to the total price⁸ of the goods less the aggregate of any deposit⁹ and the total charge for credit¹⁰.

1 For the meaning of 'conditional sale agreement' see para 93 ante.

2 For the meaning of 'goods' see para 82 note 5 ante. A hire-purchase agreement cannot be in respect of land, because bailment is defined in terms of personal chattels: see BAILMENT vol 3(1) (2005 Reissue) para 1.

3 In view of the extension of credit effected by a hire-purchase agreement (see the text to notes 5-10 infra), the bailee will be the 'debtor' and this term is used in this context. For the meaning of 'debtor' see para 81 note 3 ante. As to bailment generally see BAILMENT. As to the meaning of 'payment' see para 84 note 5 ante.

4 Consumer Credit Act 1974 s 189(1). See further s 188(1), Sch 2 Pt II example 10. See also *Forthright Finance Ltd v Carlyle Finance Ltd* [1997] 4 All ER 90, CA.

5 For the meaning of 'individual' see para 80 note 1 ante.

6 For the meaning of 'fixed-sum credit' see para 85 ante.

7 For the meaning of 'finance' see para 83 note 8 ante.

8 For the meaning of 'total price' see para 83 note 9 ante.

9 For the meaning of 'deposit' see para 83 note 10 ante.

10 See the Consumer Credit Act 1974 s 9(3); and para 83 ante. As to the total charge for credit see paras 91 ante, 224 et seq post.

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(4) OTHER CATEGORIES OF AGREEMENT AND STATUTORY DEFINITIONS/96. Arrangements between creditor and supplier.

96. Arrangements between creditor and supplier.

A consumer credit agreement¹ must be treated as entered into under pre-existing arrangements² between a creditor³ and a supplier⁴ if it is entered into in accordance with, or in furtherance of, arrangements previously made between them, or between one of them and an associate⁵ of the other, or between an associate of one of them and an associate of the other⁶. Where the creditor is an associate of the supplier, then, unless the contrary is proved, the consumer credit agreement must be treated as entered into under pre-existing arrangements between them⁷.

Similarly, a consumer credit agreement must be treated as entered into in contemplation of future arrangements⁸ between a creditor and a supplier if it is entered into in the expectation that arrangements will subsequently be made between them, or between one of them and an associate of the other, or between an associate of one of them and an associate of the other, for the supply of cash⁹, goods¹⁰ and services (or any of them) to be financed by the consumer credit agreement¹¹.

In either case, arrangements must be disregarded¹² if they are for the making of payments, in specified circumstances, to the supplier by the creditor¹³, and the creditor holds himself out as willing, in such circumstances, to make payments of the kind to suppliers generally¹⁴. Arrangements must also be disregarded if they are arrangements for the electronic transfer of funds from a current account at a bank¹⁵.

1 For the meaning of 'consumer credit agreement' see para 81 ante.

2 For the significance of pre-existing arrangements see para 87 ante. As to antecedent negotiations see para 177 post. As to negotiations by an agent see para 176 et seq post.

3 For the meaning of 'creditor' see para 81 note 2 ante.

4 For the meaning of 'supplier' see para 86 note 8 ante.

5 As to associates see para 92 ante.

6 See the Consumer Credit Act 1974 ss 187(1), (4), 189(1). See also s 188(1), Sch 2 Pt II examples 8, 21.

7 Ibid s 187(5).

8 'Future arrangements' must be construed in accordance with ibid s 187: s 189(1). For the significance of an agreement being entered into in contemplation of future arrangements see para 87 ante.

9 For the meaning of 'cash' see para 83 note 1 ante.

10 For the meaning of 'goods' see para 82 note 5 ante.

11 Consumer Credit Act 1974 ss 187(2), (4), 189(1).

12 Ie for the purposes of ibid s 187(1) or s 187(2).

13 Ibid s 187(3)(a). See further Sch 2 Pt II example 21.

14 Ibid s 187(3)(b). See further Sch 2 Pt II example 21.

15 Ie within the meaning of the Bankers' Books Evidence Act 1879 (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 907): Consumer Credit Act 1974 s 187(3A) (added by the Banking Act 1987 s 89).

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(4) OTHER CATEGORIES OF AGREEMENT AND STATUTORY DEFINITIONS/97. Antecedent negotiations.

97. Antecedent negotiations.

'Antecedent negotiations'¹ are any negotiations with the debtor² or hirer³ conducted by a negotiator⁴. Where the negotiator is not the creditor⁵ he is deemed to be acting in the capacity of agent of the creditor as well as in his actual capacity⁶. Antecedent negotiations are dealt with elsewhere in this title⁷.

- 1 For the meaning of 'antecedent negotiations' see para 177 post.
- 2 For the meaning of 'debtor' see para 81 note 3 ante.
- 3 For the meaning of 'hirer' see para 82 note 3 ante.
- 4 For the meaning of 'negotiator' see para 177 post.
- 5 For the meaning of 'creditor' see para 81 note 2 ante.
- 6 As to agency see para 176 et seq post; and AGENCY.
- 7 See para 177 post.

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(4) OTHER CATEGORIES OF AGREEMENT AND STATUTORY DEFINITIONS/98. Special provisions for multiple parties.

98. Special provisions for multiple parties.

Where an actual or prospective regulated agreement¹ has two or more debtors² or hirers³ not being a partnership⁴ or an unincorporated body of persons⁵, then (1) anything required by or under the Consumer Credit Act 1974 to be done to or in relation to the debtor or hirer must be done to or in relation to each of them⁶; and (2) anything done under the Act by or on behalf of one of them has effect as if done by or on behalf of all of them⁷. However, where running-account credit⁸ is provided to two or more debtors jointly, any of them may by a notice signed by him (a 'dispensing notice') authorise the creditor⁹ not to comply in his case with the provisions relating to the giving of periodical statements of accounts¹⁰. Head (2) above does not apply for the purposes of provisions relating to the signing of a regulated agreement¹¹.

Where a regulated agreement has two or more debtors or hirers, not being a partnership or an unincorporated body of persons, the provisions relating to the death of a debtor or hirer¹² apply to the death of any of them¹³.

An agreement for the provision of credit, or the bailment of goods¹⁴, to two or more persons jointly where (a) one or more of those persons is an individual¹⁵; and (b) one or more of them is a body corporate¹⁶, is a consumer credit agreement¹⁷ or consumer hire agreement¹⁸ if it would have been one had they all been individuals; and the body corporate or bodies corporate must accordingly be included among the debtors or hirers under the agreement¹⁹.

Where an actual or prospective regulated agreement has two or more creditors²⁰ or owners²¹, anything required by or under the Act to be done to, or in relation to, or by, the creditor or owner is effective if done to, or in relation to, or by, any one of them²².

1 For the meaning of 'regulated agreement' see para 79 ante.

2 For the meaning of 'debtor' see para 81 note 3 ante.

3 For the meaning of 'hirer' see para 82 note 3 ante.

4 For the meaning of 'partnership' see PARTNERSHIP vol 79 (2008) PARA 1.

5 An unincorporated association has no separate legal personality and is not in law distinguishable from its members: see COMPANIES vol 14 (2009) PARA 2.

6 Consumer Credit Act 1974 s 185(1)(a).

7 Ibid s 185(1)(b).

8 For the meaning of 'running-account credit' see para 84 ante.

9 For the meaning of 'creditor' see para 81 note 2 ante.

10 Consumer Credit Act 1974 s 185(2). As to the provisions relating to the giving of periodical statements of accounts see s 78(4); and para 238 post.

The dispensing notice has effect accordingly until revoked by a further notice given by the debtor to the creditor: s 185(2). However, a dispensing notice does not take effect if previous dispensing notices are operative in the case of the other debtor, or each of the other debtors, as the case may be: s 185(2) proviso para (a). Any dispensing notices operative in relation to an agreement cease to have effect if any of the debtors dies: s 185(2) proviso para (b). A dispensing notice which is operative in relation to an agreement is also operative in relation to any subsequent agreement which, in relation to the earlier agreement, is a modifying agreement: s 185(2) proviso para (c) (added by the Banking Act 1979 s 38(3)).

11 Consumer Credit Act 1974 s 185(3). As to the provisions relating to the signing of a regulated agreement see ss 61(1)(a), 127(3); and paras 160, 169 post. Any provision of the Consumer Credit Act 1974 requiring a document to be signed is complied with by a body corporate if the document is sealed by that body: s 189(1), (3).

12 Ie ibid s 86: see para 249 post.

13 Ibid s 185(4).

14 For the meaning of 'goods' see para 82 note 5 ante. As to bailment generally see BAILMENT.

15 As to the meaning of 'individual' see para 80 note 1 ante.

16 As to bodies corporate see COMPANIES; CORPORATIONS.

17 For the meaning of 'consumer credit agreement' see para 81 ante.

18 For the meaning of 'consumer hire agreement' see para 82 ante.

19 Consumer Credit Act 1974 s 185(5). Where s 185(5) applies, references in the Consumer Credit Act 1974 to the signing of any document by the debtor or hirer must be construed in relation to a body corporate as referring to a signing on behalf of the body corporate: s 185(6).

20 For the meaning of 'creditor' see para 81 note 2 ante.

21 For the meaning of 'owner' see para 82 note 1 ante.

22 Consumer Credit Act 1974 s 186.

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

98 Special provisions for multiple parties

TEXT AND NOTE 10--1974 Act s 185(2) now s 185(2), (2A)-(2D) (substituted by Consumer Credit Act 2006 s 7(3)). See also Consumer Credit Act 2006 Sch 3 para 4.

NOTE 11--1974 Act s 185(3) amended: Consumer Credit Act 2006 s 70, Sch 4. 1974 Act s 127(3) repealed: Consumer Credit Act 2006 s 15.

TEXT AND NOTE 19--1974 Act s 185(5), (6) amended: Consumer Credit Act 2006 s 5(8), (9).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(5) AGREEMENTS EXEMPT FROM PROVISIONS OF THE CONSUMER CREDIT ACT 1974/99. In general.

(5) AGREEMENTS EXEMPT FROM PROVISIONS OF THE

99. In general.

Certain agreements are not regulated by the Consumer Credit Act 1974 because they fall outside the monetary limit¹ within which the Act applies. Certain other agreements, such as small agreements², non-commercial agreements³ and bank overdraft agreements⁴, are exempted from some provisions of the Act but are governed by the rest of the Act⁵.

However, there are other agreements, known as exempt agreements⁶, which are specifically exempted from regulation by the Consumer Credit Act 1974⁷.

- 1 As to the monetary limit within which the Consumer Credit Act 1974 applies see paras 2, 81-82 ante.
- 2 For the meaning of 'small agreement' see para 108 post.
- 3 For the meaning of 'non-commercial agreement' see para 107 post.
- 4 See the Consumer Credit Act 1974 s 74(1)(b); and para 179 post.
- 5 See also para 2 text and notes 15-21 ante.
- 6 An 'exempt agreement' is an agreement specified in or under the Consumer Credit Act 1974 s 16 (as amended) (see para 100 post): see s 189(1). As to regulations made under s 16 (as amended) see the Consumer Credit (Exempt Agreements) Order 1989, SI 1989/869 (as amended); and para 100 et seq post.
- 7 See paras 100-106 post.

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

99 In general

NOTE 6--Definition of 'exempt agreement' refers also to Consumer Credit Act 1974 s 16A, 16B or 16C: s 189(1) (amended by Consumer Credit Act 2006 s 5(10); and SI 2008/2826).

See also Consumer Credit (Exempt Agreements) Order 2007, SI 2007/1168; *Zoan v Rouamba* [2000] 2 All ER 620, [2000] 1 WLR 1509, CA.

NOTE 7--There are exemptions relating to high net worth debtors and hirers (see 1974 Act s 16A; and PARA 99A), to businesses (see s 16B; and PARA 99B) and investment properties (see s 16C; and PARA 99C).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(5) AGREEMENTS EXEMPT FROM PROVISIONS OF THE CONSUMER CREDIT ACT 1974/99A. Exemption relating to high net worth debtors and hirers.

99A. Exemption relating to high net worth debtors and hirers.

The Secretary of State may by order provide that the Consumer Credit Act 1974 does not regulate a consumer credit agreement or a consumer hire agreement where (1) the debtor or hirer is a natural person; (2) the agreement includes a declaration made by him to the effect that he agrees to forgo the protection and remedies that would be available to him¹ if the agreement were a regulated agreement; (3) a statement of high net worth has been made in relation to him; and (4) that statement is current in relation to the agreement and a copy of it was provided to the creditor or owner before the agreement was made². For these purposes, a statement of high net worth is a statement to the effect that, in the opinion of the person making it, the natural person in relation to whom it is made received during the previous financial year³ income of a specified⁴ description totalling an amount of not less than the specified amount, or had throughout that year net assets of a specified description with a total value of not less than the specified value⁵. Such a statement may not be made by the person in relation to whom it is made, must be made by a person of a specified description, and is current in relation to an agreement if it was made during the period of one year ending with the day on which the agreement is made⁶. Such an order may make provision about (a) how amounts of income and values of net assets are to be determined for the purposes of a statement of high net worth; and (b) the form, content and signing of statements of high net worth and declarations for the purposes of head (2) above⁷.

1 Ie under the Consumer Credit Act 1974.

2 Ibid s 16A(1) (s 16A added by the Consumer Credit Act 2006 s 3). See the Consumer Credit (Exempt Agreements) Order 2007, SI 2007/1168. Where an agreement has two or more debtors or hirers, for the purposes of head (3) of the TEXT a separate statement of high net worth must have been made in relation to each of them, and head (4) of the TEXT has effect accordingly: 1974 Act s 16A(5).

3 'Previous financial year' means, in relation to a statement of high net worth, the financial year immediately preceding the financial year during which the statement is made: ibid s 16A(6).

4 In ibid s 16A, 'specified' means specified in an order under s 16A: s 16A(6).

5 Ibid s 16A(2).

6 Ibid s 16A(3).

7 Ibid s 16A(4).

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(5) AGREEMENTS EXEMPT FROM PROVISIONS OF THE CONSUMER CREDIT ACT 1974/99B. Exemption relating to businesses.

99B. Exemption relating to businesses.

The Consumer Credit Act 1974 does not regulate (1) a consumer credit agreement by which the creditor provides the debtor with credit exceeding £25,000, or (2) a consumer hire agreement that requires the hirer to make payments exceeding £25,000, if the agreement is entered into by the debtor or hirer wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by him: Consumer Credit Act 1974 s 16B(1) (s 16B added by Consumer Credit Act 2006 s 4). If an agreement includes a declaration made by the debtor or hirer to the effect that the agreement is entered into by him wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by him, the agreement will be presumed to have been entered into by him wholly or predominantly for such purposes: Consumer Credit Act 1974 s 16B(2). But that presumption does not apply if, when the agreement is entered into (a) the creditor or owner, or (b) any person who has acted on his behalf in connection with the entering into of the agreement, knows, or has reasonable cause to suspect, that the agreement is not entered into by the debtor or hirer wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by him: s 16B(3). The Secretary of State may by order make provision about the form, content and signing of declarations for the purposes of s 16B(2): s 16B(4). Where an agreement has two or more creditors or owners, in s 16B(3) references to the creditor or owner are references to any one or more of them: s 16B(5). Nothing in s 16B affects the application of ss 140A-140C (see PARA 109): s 16B(6).

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(5) AGREEMENTS EXEMPT FROM PROVISIONS OF THE CONSUMER CREDIT ACT 1974/99C. Exemption relating to investment properties.

99C. Exemption relating to investment properties.

The Consumer Credit Act 1974 does not regulate a consumer credit agreement (see PARA 81) if, at the time the agreement is entered into, any sums due under it are secured by a land mortgage on land where less than 40% of the land is used, or is intended to be used, as or in connection with a dwelling by the debtor or a person connected with the debtor, or, in the case of credit provided to trustees, by an individual who is the beneficiary of the trust or a person connected with such an individual: s 16C(1), (2) (s 16C added by SI 2008/2826). For these purposes the area of any land which comprises a building or other structure containing two or more storeys is to be taken to be the aggregate of the floor areas of each of those storeys: Consumer Credit Act 1974 s 16C(3).

A person is 'connected with' the debtor or an individual who is the beneficiary of a trust if he is that person's spouse or civil partner; a person (whether or not of the opposite sex) whose relationship with that person has the characteristics of the relationship between husband and wife; or that person's parent, brother, sister, child, grandparent or grandchild: s 16C(4).

Section 126 (see PARA 220) applies to an agreement which would but for s 16C be a regulated agreement (see PARA 79): s 16C(5). Nothing in s 16C affects the application of ss 140A-140C (see PARA 109): s 16C(6).

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(5) AGREEMENTS EXEMPT FROM PROVISIONS OF THE CONSUMER CREDIT ACT 1974/100. Certain agreements relating to land where the creditor is a local authority, a housing authority or a specified body.

100. Certain agreements relating to land where the creditor is a local authority, a housing authority or a specified body.

The Consumer Credit Act 1974 does not regulate a consumer credit agreement¹ where the creditor² is a local authority³, or a body specified, or of a description specified, in an order made by the Secretary of State⁴, being (1) an insurance company⁵; (2) a friendly society⁶; (3) an organisation of employers or organisation of workers⁷; (4) a charity⁸; (5) a land improvement company⁹; (6) a body corporate named or specifically referred to in any public general Act¹⁰; (7) a body corporate named or specifically referred to in an order under certain housing legislation¹¹; (8) a building society¹²; or (9) an authorised institution¹³ or wholly-owned subsidiary¹⁴ of such an institution¹⁵. This exemption applies only where the agreement is (a) a debtor-creditor-supplier agreement¹⁶ financing¹⁷ the purchase of land¹⁸ or the provision of dwellings on any land, and secured by a land mortgage¹⁹ on that land²⁰; or (b) a debtor-creditor agreement²¹ secured by any land mortgage²²; or (c) a debtor-creditor-supplier agreement financing a transaction which is a linked transaction²³ in relation to an agreement falling within head (a) above²⁴ or an agreement falling within head (b) above financing the purchase of any land or the provision of dwellings on any land²⁵, and secured by a land mortgage²⁶.

Such consumer credit agreements are exempt in certain circumstances²⁷.

Where the creditor is a body specified in certain provisions²⁸, or a building society authorised under the Building Societies Act 1986²⁹, or an authorised institution under the Banking Act 1987³⁰ or a wholly-owned subsidiary of such an institution, the Consumer Credit Act 1974 does not regulate (i) a debtor-creditor-supplier agreement falling within head (a) or head (c) above³¹; (ii) a debtor-creditor agreement secured by any land mortgage to finance (A) the purchase of land; or (B) the provision of dwellings or business premises³² on any land; or (c) the alteration, enlarging, repair or improvement of a dwelling or business premises on any land³³; (iii) a debtor-creditor agreement secured by any land mortgage to refinance any existing indebtedness of the debtor, whether to the creditor or another person, under any agreement by which the debtor was provided with credit for any of the purposes specified in head (ii) above³⁴.

Where the creditor is a body specified in certain other provisions³⁵, the Consumer Credit Act 1974 does not regulate an agreement of a description specified³⁶ in relation to that body and made pursuant to an enactment or for a purpose so specified³⁷.

Where the creditor is a body specified in yet other provisions³⁸, the Consumer Credit Act 1974 does not regulate an agreement of a description falling within heads (i) to (iii) above, being an agreement advancing money on the security of a dwelling house³⁹.

The Consumer Credit Act 1974 does not regulate a consumer credit agreement where the creditor is a housing authority⁴⁰ and the agreement is secured by a land mortgage of a dwelling⁴¹.

Nothing in these provisions affects the application of the provisions relating to extortionate credit bargains⁴², which accordingly apply even to exempt agreements.

1 For the meaning of 'consumer credit agreement' see para 81 ante.

2 For the meaning of 'creditor' see para 81 note 2 ante.

3 Consumer Credit Act 1974 s 16(1) (amended by the Building Societies Act 1986 s 120(2), Sch 19 Pt I). 'Local authority', in relation to England, means a county council, a London borough council, a district council, the Common Council of the City of London, or the Council of Isles of Scilly; in relation to Wales, means a county council or a county borough council; and, in relation to Northern Ireland, means a district council: Consumer Credit Act 1974 s 189(1) (amended by the Local Government Act 1985 s 102(2), Sch 17; and the Local Government (Wales) Act 1994 s 66(6), (8), Sch 16 para 45, Sch 18).

4 As to the power to make orders see para 114 post. As to the Secretary of State see para 113 post. An order under the Consumer Credit Act 1974 s 16(1) relating to a body may be limited so as to apply only to agreements by that body of a description specified in the order: s 16(4). As to orders made see the Consumer Credit (Exempt Agreements) Order 1989, SI 1989/869 (as amended), which came into force on 19 June 1989 (see art 1(1)).

5 Consumer Credit Act 1974 s 16(1)(a). 'Insurance company' has the meaning given by the Insurance Companies Act 1982 s 96(1), but does not include a friendly society or an organisation of workers or organisation of employers: Consumer Credit Act 1974 s 189(1) (amended by the Insurance Companies Act 1982 s 99(2), Sch 5 para 14). 'Friendly society' means a society registered under the Friendly Societies Acts 1896 to 1971 (consolidated by the Friendly Societies Act 1974: see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2094, 2149 et seq): Consumer Credit Act 1974 s 189(1) (amended by the Friendly Societies Act 1992 s 120(2), Sch 22 Pt I). The Secretary of State may not make, vary or revoke an order under the Consumer Credit Act 1974 s 16(1)(a) without consulting the Minister of the Crown responsible for insurance companies: s 16(3)(a). As to the application of these provisions to Northern Ireland see s 16(9).

6 Ibid s 16(1)(b). The Secretary of State may not make, vary or revoke an order under s 16(1)(b) without consulting the Chief Registrar of Friendly Societies: s 16(3)(b) (amended by the Employment Protection Act 1975 s 125(3), Sch 18). See note 5 supra.

7 Consumer Credit Act 1974 s 16(1)(c).

8 Ibid s 16(1)(d). 'Charity' means, as respects England and Wales, a charity registered under the Charities Act 1993 or an exempt charity (within the meaning of that Act: see CHARITIES vol 8 (2010) PARA 315 et seq) and, as respects Northern Ireland, an institution or other organisation established for charitable purposes only ('organisation' including any persons administering a trust and 'charitable' being construed in the same way as if it were contained in the Income Tax Acts: see INCOME TAXATION vol 23(2) (Reissue) para 1172): Consumer Credit Act 1974 s 189(1) (amended by the Charities Act 1993 s 98(1), Sch 6 para 30). The Secretary of State may not make, vary or revoke an order under the Consumer Credit Act 1974 s 16(1)(d) without consulting the Charity Commissioners: s 16(3)(c) (amended by the Building Societies Act 1986 Sch 19 Pt I). See note 5 supra.

9 Consumer Credit Act 1974 s 16(1)(e) (amended by the Building Societies Act 1986 s 120(1), Sch 18 Pt I para 10(1), (2), Sch 19 Pt I). 'Land improvement company' means an improvement company as defined by the Improvement of Land Act 1899 s 7 (see AGRICULTURAL LAND vol 1 (2008) PARA 623): Consumer Credit Act 1974 s 189(1). The Secretary of State may not make, vary or revoke an order under s 16(1)(e) without consulting any Minister of the Crown with responsibilities concerning the body in question: s 16(3)(d) (amended by the Housing and Planning Act 1986 s 22(1), (2)). See note 5 supra.

10 Consumer Credit Act 1974 s 16(1)(f). As to bodies corporate see COMPANIES; CORPORATIONS. The Secretary of State may not make, vary or revoke an order under s 16(1)(f) without consulting any Minister of the Crown with responsibilities concerning the body in question: s 16(3)(d) (as amended: see note 9 supra). See note 5 supra.

11 In an order made under the Housing Act 1985 s 156(4) (as amended) or s 447(2)(a); the Housing (Northern Ireland) Order 1981, SI 1981/156, art 154(1)(a) or art 156AA; or the Housing (Northern Ireland) Order 1983, SI 1983/1118, art 10(6A): Consumer Credit Act 1974 s 16(1)(ff) (added by the Housing and Planning Act 1986 s 22(1), (2); amended by the Housing Act 1996 s 227, Sch 19 Pt XIV). The Secretary of State may not make, vary or revoke an order under the Consumer Credit Act 1974 s 16(1)(ff) without consulting any Minister of the Crown with responsibilities concerning the body in question: s 16(3)(d) (as amended: see note 9 supra). See note 5 supra.

12 Ibid s 16(1)(g) (added by the Building Societies Act 1986 Sch 18 Pt I para 10(1), (2)). 'Building society' means a building society within the meaning of the Building Societies Act 1986 (see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1856): Consumer Credit Act 1974 s 189(1) (definition substituted by the Building Societies Act 1986 Sch 18 Pt I para 10(1), (4)). The Secretary of State may not make, vary or revoke an order under the Consumer Credit Act 1974 s 16(1)(g) without consulting the Building Societies Commission and the Treasury: s 16(3)(e) (added by the Building Societies Act 1986 Sch 18 Pt I para 10(1), (3)).

13 'Authorised institution' means an institution authorised under the Banking Act 1987: Consumer Credit Act 1974 s 189(1) (definition added by the Banking Act 1987 s 88(1), (4)). A reference to an institution authorised under the Banking Act 1987 includes a reference to a European deposit-taker: see the Banking Coordination

(Second Council Directive) Regulations 1992, SI 1992/3218, reg 82(1), Sch 10 Pt I para 7. 'European deposit-taker' means a European authorised institution which has lawfully established a branch in the United Kingdom for the purpose of accepting deposits: reg 82(3). A credit institution is a 'European authorised institution' if it is incorporated in or formed under the law of another member state, has its principal place of business in that state, is for the time being authorised to act as a credit institution by the relevant supervisory authority in that state, and the requirements set out in the regulations have been complied with: reg 3(2), Sch 2 para 1. 'Member state' means a member state of the Communities or a relevant EFTA State (ie Austria, Finland, Iceland, Norway and Sweden): reg 2. For the meaning of 'United Kingdom' see para 70 note 4 post.

14 le within the meaning of the Companies Act 1985.

15 Consumer Credit Act 1974 s 16(1)(h) (added by the Banking Act 1987 s 88(1), (2)). The Secretary of State may not make, vary or revoke an order under the Consumer Credit Act 1974 s 16(1)(h) without consulting the Treasury and the Bank of England: s 16(3)(f) (added by the Banking Act 1987 s 88(1), (3)).

16 For the meaning of 'debtor-creditor-supplier agreement' see para 87 ante.

17 For the meaning of 'finance' see para 83 note 8 ante.

18 For the meaning of 'land' see para 93 note 2 ante.

19 'Land mortgage' includes any security charged on land: Consumer Credit Act 1974 s 189(1).

20 Ibid s 16(2)(a).

21 For the meaning of 'debtor-creditor agreement' see para 87 ante.

22 Consumer Credit Act 1974 s 16(2)(b).

23 As to linked transactions see paras 90 ante, 196-198 post.

24 Consumer Credit Act 1974 s 16(2)(c)(i).

25 Ibid s 16(2)(c)(ii).

26 le a land mortgage on the land referred to in ibid s 16(2)(a) (see head (a) in the text) or, as the case may be, the land referred to in s 16(2)(c)(ii) (see the text to note 25 supra): s 16(2)(c).

27 The Consumer Credit Act 1974 does not regulate a consumer credit agreement which falls within s 16(2), being an agreement to which the Consumer Credit (Exempt Agreements) Order 1989, SI 1989/869, art 2(1) applies: art 2(1).

28 le specified in ibid art 2(2), Sch 1 Pt I (amended by SI 1989/1841; SI 1991/1393; SI 1991/1949; SI 1991/2844; SI 1993/346; SI 1993/2922; SI 1994/2420; SI 1995/2914; SI 1996/3081). The reference in the Consumer Credit (Exempt Agreements) Order 1989, SI 1989/869, art 2(2) to an authorised institution under the Banking Act 1987 includes a reference to a European deposit-taker: see the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218; and note 13 supra.

29 See FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1866.

30 See FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 791 et seq.

31 See the Consumer Credit (Exempt Agreements) Order 1989, SI 1989/869, art 2(1), (2)(a).

32 'Business premises' means premises for occupation for the purposes of a business (including any activity carried on by a body of persons, whether corporate or unincorporate) or for those and other purposes: ibid art 1(2).

33 See ibid art 2(1), (2)(b). Head (c) in the text applies only:

- 1 (1) where the creditor is the creditor under (a) an agreement, whenever made, by which the debtor is provided with credit for any of the purposes specified in heads (A) and (B) in the text; or (b) an agreement, whenever made, refinancing an agreement under which the debtor is provided with credit for any of the said purposes, being, in either case, an agreement relating to the land referred to in head (c) in the text and secured by a land mortgage on that land (see art 2(3)(i)); or

- 2 (2) where a debtor-creditor agreement to finance the alteration, enlarging, repair or improvement of a dwelling, secured by a land mortgage on that dwelling, is made as a result of any such services as are described in the Housing Associations Act 1985 s 4(3)(e) (repealed: see now the Housing Act 1996 s 2(4)(e); and HOUSING) which are certified as having been provided by (a) a local authority; (b) a housing association within the meaning of the Housing Associations Act 1985 s 1 (as amended) or the Housing (Northern Ireland) Order 1992, SI 1992/1725, art 3 (see HOUSING vol 22 (2006 Reissue) para 11); (c) a body established by such a housing association for the purpose of providing such services as are described in the Housing Associations Act 1985 s 4(3)(e) (repealed: see supra); (d) a charity; (e) the National Home Improvement Council; (f) the Northern Ireland Housing Executive; or (g) a body, or a body of any description, that has been approved by the Secretary of State under the Local Government and Housing Act 1989 s 169(4)(c) or the Department of the Environment for Northern Ireland under the Housing (Northern Ireland) Order 1992, SI 1992/1725, art 103(4)(c) (see HOUSING) (see the Consumer Credit (Exempt Agreements) Order 1989, SI 1989/869, art 2(3)(ii) (amended by SI 1991/2844; SI 1993/2922)).

For the meaning of 'debtor' see para 81 note 3 ante. For the meaning of 'credit' see para 83 ante.

34 See the Consumer Credit (Exempt Agreements) Order 1989, SI 1989/869, art 2(1), (2)(c).

35 ie specified in ibid art 2(4), Sch 1 Pt II (amended by SI 1991/1949).

36 ie specified in the Consumer Credit (Exempt Agreements) Order 1989, SI 1989/869, Sch 1 Pt II (as amended: see note 35 supra).

37 See ibid art 2(1), (4).

38 ie specified in ibid art 2(5), Sch 1 Pt III (substituted by SI 1996/3081).

39 See the Consumer Credit (Exempt Agreements) Order 1989, SI 1989/869, art 2(1), (5).

40 For these purposes 'housing authority' means (1) as regards England and Wales, the Housing Corporation, Housing for Wales and an authority or body within the Housing Act 1985 s 80(1) (as amended) (see HOUSING), other than a housing association or a housing trust which is a charity; (2) as regards Northern Ireland, the Northern Ireland Housing Executive: Consumer Credit Act 1974 s 16(6B) (added by the Housing and Planning Act 1986 s 22(1), (3); amended by the Housing Act 1988 s 140(1), Sch 17 Pt I para 20).

41 Consumer Credit Act 1974 s 16(6A) (added by the Housing and Planning Act 1986 s 22(1), (3)).

42 ie the Consumer Credit Act 1974 ss 137, 138, 139, 140 (s 139 as amended) (see paras 109, 269-270 post): s 16(7).

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

100 Certain agreements relating to land where the creditor is a local authority, a housing authority or a specified body

NOTES 5, 6, 8-12, 15--Consumer Credit Act 1974 s 16(3) substituted: SI 2001/3649.

TEXT AND NOTE 5--For 'an insurance company' read 'an insurer': Consumer Credit Act 1974 s 16(1)(a) (substituted by SI 2001/3649). For the meaning of 'insurer' see Consumer Credit Act 1974 s 16(10)(b), (11) (added by SI 2001/3649). Definition of 'insurance company' in Consumer Credit Act 1974 s 189(1) repealed: SI 2001/3649. In

the definition of 'friendly society' for 'under the Friendly Societies Acts 1896 to 1971' read 'or treated as registered under the Friendly Societies Act 1974 or the Friendly Societies Act 1992': Consumer Credit Act 1974 s 189(1) (amended by SI 2001/3649). Consumer Credit Act 1974 s 16(9) amended: SI 2001/3649.

TEXT AND NOTES 13-15--Now, head (9) a deposit-taker: Consumer Credit Act 1974 s 16(1) (h) (substituted by SI 2001/3649). For the meaning of 'deposit-taker' see Consumer Credit Act 1974 s 16(10)(a), (11) (added by SI 2001/3649, s 16(10)(a) amended by SI 2009/1941). Definition of 'authorised institution' in Consumer Credit Act 1974 s 189(1) repealed and SI 1992/3218 revoked: SI 2001/3649.

TEXT AND NOTES 29-31--For 'or a building society ... such an institution,' read 'or a deposit taker (within the meaning given by the Consumer Credit Act 1974 s 16(10))': SI 1989/869 art 2(2) (amended by SI 2001/3649).

NOTE 30--Banking Act 1987 repealed: SI 2001/3649.

NOTE 35--SI 1989/869 Sch 1 Pt II further amended: SI 2008/645, SI 2008/2831.

NOTES 40, 41--See further 1974 Act s 16(6C)-(6E) (added by SI 2001/544; 1974 Act s 16(6C) substituted by SI 2006/2383).

NOTE 40--Reference to Housing Corporation treated as reference to the Regulator of Social Housing: Transfer of Housing Corporation Functions (Modifications and Transitional Provisions) Order 2008, SI 2008/2839.

Reference to Housing for Wales omitted: 1974 Act s 16(6B) (amended by Government of Wales Act 1998 Sch 18).

1974 Act s 16(6B) further amended, s 16(6BA) added: SI 2008/3002.

NOTE 42--Consumer Credit Act 1974 s 16(7) repealed: Consumer Credit Act 2006 Sch 4. Nothing in the Consumer Credit Act 1974 s 16 affects the application of ss 140A-140C (see PARA 109): s 16(7A) (added by Consumer Credit Act 2006 s 22(2)).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(5) AGREEMENTS EXEMPT FROM PROVISIONS OF THE CONSUMER CREDIT ACT 1974/101. Power to exempt certain consumer credit agreements.

101. Power to exempt certain consumer credit agreements.

The Secretary of State¹ may by order² provide that the Consumer Credit Act 1974 is not to regulate consumer credit agreements³ where (1) the number of payments to be made by the debtor⁴ does not exceed the number specified for that purpose in the order⁵; or (2) the rate of the total charge for credit⁶ does not exceed the rate so specified⁷; or (3) an agreement has a connection with a country outside the United Kingdom⁸.

- 1 As to the Secretary of State see para 113 post.
- 2 As to the power to make orders see para 114 post.
- 3 For the meaning of 'consumer credit agreement' see para 81 ante.
- 4 For the meaning of 'debtor' see para 81 note 3 ante.
- 5 As to the provisions made see para 102 post.
- 6 As to the total charge for credit see paras 91 ante, 224 et seq post.
- 7 As to the provisions made see para 103 post.
- 8 Consumer Credit Act 1974 s 16(5). For the meaning of 'United Kingdom' see para 70 note 4 ante. As to the provisions made see para 104 post.

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(5) AGREEMENTS EXEMPT FROM PROVISIONS OF THE CONSUMER CREDIT ACT 1974/102. Exemption based on number of payments.

102. Exemption based on number of payments.

The Secretary of State¹ has ordered² that the Consumer Credit Act 1974 is not to regulate a consumer credit agreement³ which is an agreement of one of the following descriptions:

- 10 (1) a debtor-creditor-supplier agreement⁴ being either (a) an agreement for fixed-sum credit⁵ under which the total number of payments⁶ to be made by the debtor⁷ does not exceed four, and those payments are required to be made within a period not exceeding 12 months beginning with the date of the agreement⁸; or (b) an agreement for running-account credit⁹ which provides for the making of payments by the debtor in relation to specified periods and requires that the number of payments to be made by the debtor in repayment of the whole amount of the credit provided in each such period is not to exceed one¹⁰. In either case, these provisions do not apply if the agreements are (i) agreements financing the purchase of land¹¹; (ii) agreements which are conditional sale agreements¹² or hire-purchase agreements¹³; (iii) or agreements secured by a pledge¹⁴, other than a pledge of documents of title or of bearer bonds¹⁵;
- 11 (2) a debtor-creditor-supplier agreement financing the purchase of land, being an agreement under which the number of payments to be made by the debtor does not exceed four¹⁶;
- 12 (3) a debtor-creditor-supplier agreement for fixed-sum credit to finance a premium under a contract of insurance relating to any land or anything on it, where (a) the creditor¹⁷ is the creditor under an agreement secured by a land mortgage¹⁸ on that land which either is an exempt agreement¹⁹ or is a personal credit agreement²⁰ which would be an exempt agreement if the credit provided were not to exceed the monetary limit²¹; (b) the amount of the credit is to be repaid within the period to which the premium relates, not being a period exceeding 12 months²²; and (c) there is no charge forming part of the total charge for credit²³ under the agreement other than interest at a rate not exceeding the rate of interest from time to time payable under the agreement mentioned in head (3)(a) above²⁴, and the number of payments to be made by the debtor does not exceed 12²⁵;
- 13 (4) a debtor-creditor-supplier agreement for fixed-sum credit where (a) the creditor is the creditor under an agreement secured by a land mortgage on any land which either is an exempt agreement²⁶ or is a personal credit agreement which would be an exempt agreement if the credit provided were not to exceed the monetary limit²⁷; (b) the agreement is to finance a premium under a contract of life insurance which provides, in the event of the death before the credit under the agreement referred to in head (4)(a) above has been repaid of the person on whose life the contract is effected, for payment of a sum not exceeding the amount sufficient to defray the sums which, immediately after that credit has been advanced, would be payable to the creditor in respect of that credit and of the total charge for that credit²⁸; and (c) there is no charge forming part of the total charge for credit under the agreement other than interest at a rate not exceeding the rate of interest from time to time payable under the agreement referred to in head (4)(a) above²⁹, and the number of payments to be made by the debtor does not exceed 12³⁰.

- 1 As to the Secretary of State see para 113 post.
- 2 Ie under the Consumer Credit Act 1974 s 16(5): see para 101 head (1) ante. As to the power to make orders see para 114 post.
- 3 For the meaning of 'consumer credit agreement' see para 81 ante.
- 4 For the meaning of 'debtor-creditor-supplier agreement' see para 87 ante.
- 5 For the meaning of 'fixed-sum credit' see para 85 ante.
- 6 For these purposes, 'payment' means a payment comprising an amount in respect of credit with or without any other amount: Consumer Credit (Exempt Agreements) Order 1989, SI 1989/869, art 3(1)(a). As to the meaning of 'payment' generally see para 84 note 5 ante.
- 7 For the meaning of 'debtor' see para 81 note 3 ante.
- 8 Consumer Credit (Exempt Agreements) Order 1989, SI 1989/869, art 3(1)(a)(i).
- 9 For the meaning of 'running-account credit' see para 84 ante.
- 10 Consumer Credit (Exempt Agreements) Order 1989, SI 1989/869, art 3(1)(a)(ii). For the meaning of 'credit' see para 83 ante.
- 11 For the meaning of 'land' see para 93 note 2 ante.
- 12 For the meaning of 'conditional sale agreement' see para 93 ante.
- 13 For the meaning of 'hire-purchase agreement' see para 95 ante.
- 14 As to pledges see para 208 et seq post; and BAILMENT; PLEDGES AND PAWNS vol 36(1) (2007 Reissue) para 1 et seq.
- 15 See the Consumer Credit (Exempt Agreements) Order 1989, SI 1989/869, art 3(1)(a), (2).
- 16 Ibid art 3(1)(b). For these purposes, 'payment' means a payment comprising or including an amount in respect of credit or the total charge for credit, if any: art 3(1)(b).
- 17 For the meaning of 'creditor' see para 81 note 2 ante.
- 18 For the meaning of 'land mortgage' see para 100 note 19 ante.
- 19 Ie by virtue of the Consumer Credit Act 1974 s 16(1) (see para 100 ante) or of the Consumer Credit (Exempt Agreements) Order 1989, SI 1989/869, art 2 (see para 100 ante).
- 20 For the meaning of 'personal credit agreement' see para 80 ante.
- 21 Consumer Credit (Exempt Agreements) Order 1989, SI 1989/869, art 3(1)(c)(i). Article 3(1)(c)(i) refers to '£15,000', but the monetary limit has now been increased to £25,000: see paras 2, 81 ante.
- 22 Ibid art 3(1)(c)(ii).
- 23 References to the total charge for credit and the rate thereof are respectively references to the total charge for credit and the rate thereof calculated in accordance with the Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51: Consumer Credit (Exempt Agreements) Order 1989, SI 1989/869, art 1(2). As to the total charge for credit see paras 91 ante, 224 et seq post.
- 24 Ibid art 3(1)(c)(iii).
- 25 Ibid art 3(1)(c). For these purposes, 'payment' has the same meaning as it has in note 16 supra: see art 3(1)(c).
- 26 See note 19 supra.
- 27 Consumer Credit (Exempt Agreements) Order 1989, SI 1989/869, art 3(1)(d)(i). Article 3(1)(d)(i) refers to '£15,000', but the monetary limit has now been increased to £25,000: see paras 2, 81 ante.

28 Ibid art 3(1)(d)(ii).

29 Ibid art 3(1)(d)(iii).

30 Ibid art 3(1)(d). For these purposes, 'payment' has the same meaning as it has in note 16 supra: see art 3(1)(d).

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

102 Exemption based on number of payments

NOTE 8--See *Ketley v Gilbert* [2000] All ER (D) 2429, CA (agreement providing for single payment 'on the expiry of 12 months' not exempt from provisions of 1974 Act); *Thew v Cole; King v Daltry* [2003] EWCA Civ 1828, [2004] RTR 410 (agreement requiring payment by end of period of deferral, defined as 'not more than 12 months', within a period not exceeding 12 months and, therefore, exempt).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(5) AGREEMENTS EXEMPT FROM PROVISIONS OF THE CONSUMER CREDIT ACT 1974/103. Exemption based on the rate of the total charge for credit.

103. Exemption based on the rate of the total charge for credit.

The Secretary of State¹ has ordered² that the Consumer Credit Act 1974 is not to regulate a consumer credit agreement³ which is an agreement of one of the following descriptions:

- 14 (1) any debtor-creditor agreement⁴ in respect of which the rate of the total charge for credit⁵ does not exceed the specified rate⁶;
- 15 (2) a debtor-creditor-supplier agreement⁷ for fixed-sum credit⁸, where (a) the creditor is the creditor under an agreement secured by a land mortgage⁹ on any land¹⁰ which either is an exempt agreement¹¹ or is a personal credit agreement¹² which would be an exempt agreement if the credit¹³ provided were not to exceed the monetary limit¹⁴; (b) the agreement is to finance a premium under a contract of life insurance which provides, in the event of the death before the credit under the agreement referred to in head (2)(a) above has been repaid of the person on whose life the contract is effected, for payment of a sum not exceeding the amount sufficient to defray the sums which, immediately after that credit has been advanced, would be payable to the creditor in respect of that credit and of the total charge for that credit¹⁵; and (c) there is no charge forming part of the total charge for credit under the agreement other than interest at a rate not exceeding the rate of interest from time to time payable under the agreement referred to in head (2) (a) above¹⁶, and in respect of which the rate of the total charge for credit does not exceed the specified rate¹⁷;
- 16 (3) a debtor-creditor agreement in respect of which the only amount included in the total charge for credit is interest¹⁸ which cannot under the agreement at any time exceed the higher of the following: (a) the sum of one per cent and the highest of any base rates published by specified banks¹⁹, being the latest rates in operation on the date 28 days before any such time; and (b) 13 per cent²⁰.

1 As to the Secretary of State see para 113 post.

2 Ie under the Consumer Credit Act 1974 s 16(5): see para 101 head (2) ante. As to the power to make orders see para 114 post.

3 For the meaning of 'consumer credit agreement' see para 81 ante.

4 For the meaning of 'debtor-creditor agreement' see para 87 ante.

5 As to the total charge for credit see paras 91 ante, 224 et seq post.

6 Consumer Credit (Exempt Agreements) Order 1989, SI 1989/869, art 4(1)(a).

The rate mentioned in art 4(1)(a), (b) is the higher of the following: (1) the sum of one per cent and the highest of any base rates published by specified banks, being the latest rates in operation on the date 28 days before the date on which the agreement is made; and (2) 13 per cent: art 4(5).

The banks referred to in art 4(1)(c), (5) are: Bank of England, Bank of Scotland, Barclays Bank plc, Clydesdale Bank plc, Co-operative Bank plc, Coutts & Co, Lloyds Bank plc, Midland Bank plc, National Westminster Bank plc, The Royal Bank of Scotland plc, TSB Bank plc: art 4(6) (amended by SI 1991/1393).

The Consumer Credit (Exempt Agreements) Order 1989, SI 1989/869, art 4(1)(a) does not apply to agreements which provide for an increase in, or permit the creditor to increase, the rate or amount of any item which is included in the total charge for credit, or would fall to be so included apart from the operation of the Consumer

Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, reg 15 (see para 233 head (3) post), after the relevant date of the agreement within the meaning of reg 1(2) (see para 227 note 13 post): Consumer Credit (Exempt Agreements) Order 1989, SI 1989/869, art 4(2) (amended by SI 1991/1393). However, the Consumer Credit (Exempt Agreements) Order 1989, SI 1989/869, art 4(1)(a) does apply to agreements (a) in relation to which the debtor, or any one of two or more debtors where each debtor is a relative of the other debtor or of one of the other debtors, is an employee of the creditor or of an associate of his, and which provide for an increase in, or permit the creditor to increase, the rate or amount of any item such as is mentioned in art 4(2) (as amended) on the termination of such employment with the creditor or such associate, as the case may be (art 4(3)(a)); or (b) under which the rate or amount of any such item falls to be ascertained throughout the duration of the agreement by reference to the level of any index or other factor in accordance with any formula specified in the agreement (art 4(3)(b)), and which do not provide for an increase in, or permit the creditor to increase, the rate or amount of any item mentioned in art 4(2) (as amended) in any way other than those permitted by either or both of art 4(3)(a) or (b): art 4(3). For the meaning of 'creditor' see para 81 note 2 ante. For the meaning of 'debtor' see para 81 note 3 ante. As to the meaning of 'relative' see para 116 note 12 post. As to associates see para 92 ante.

Article 4(1) does not apply to agreements under which the total amount to be repaid by the debtor to discharge his indebtedness in respect of the amount of credit provided may vary according to any formula specified in the agreement having effect by reference to movements in the level of any index or to any other factor: art 4(4).

- 7 For the meaning of 'debtor-creditor-supplier agreement' see para 87 ante.
- 8 For the meaning of 'fixed-sum credit' see para 85 ante.
- 9 For the meaning of 'land mortgage' see para 100 note 19 ante.
- 10 For the meaning of 'land' see para 93 note 2 ante.
- 11 Ie by virtue of the Consumer Credit Act 1974 s 16(1) (see para 100 ante) or of the Consumer Credit (Exempt Agreements) Order 1989, SI 1989/869, art 2 (see para 100 ante).
- 12 For the meaning of 'personal credit agreement' see para 80 ante.
- 13 For the meaning of 'credit' see para 83 ante.
- 14 Consumer Credit (Exempt Agreements) Order 1989, SI 1989/869, art 4(1)(b)(i). Article 4(1)(b)(i) refers to '£15,000', but the monetary limit has now been increased to £25,000: see paras 2, 81 ante.
- 15 Ibid art 4(1)(b)(ii).
- 16 Ibid art 4(1)(b)(iii).
- 17 Ibid art 4(1)(b). The rate is that referred to in art 4(5): see note 6 supra. Article 4(1)(b) is subject to art 4(4): see note 6 supra.
- 18 For these purposes, 'interest' means interest at a rate determined in accordance with the formula set out in the Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, reg 7(1) (see para 229 note 10 post); and in that formula as applied by these provisions 'period rate of charge' has the meaning assigned to it in reg 7(2) (see para 229 note 3 post): see the Consumer Credit (Exempt Agreements) Order 1989, SI 1989/869, art 4(1)(c).
- 19 Ie the banks named in ibid art 4(6) (as amended): see note 6 supra.
- 20 Ibid art 4(1)(c). Article 4(1)(c) is subject to art 4(4): see note 6 supra.

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

103 Exemption based on the rate of the total charge for credit

TEXT AND NOTES--Replaced. Now, the Consumer Credit Act 1974 is not to regulate (1) a debtor-creditor agreement where the creditor is a credit union and the rate of the total charge for credit does not exceed 26•9 per cent; (2) a debtor-creditor agreement of a type offered to a certain class or classes of persons and not offered to the public generally, and under the terms of which the only charge included in the total charge for credit is interest which cannot at any time exceed the sum of one per cent and the highest of the base rate published by specified banks, being the latest rates in operation on the date 28 days before any such time; (3) a debtor-creditor agreement of a type offered to a particular class, or particular classes, of individuals and not offered to the public generally under which there can be no increase after the relevant date in the rate or amount of any item which is included in the total charge for credit or which would be included but for Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, reg 14, and in respect of which the rate of the total charge for credit does not exceed the sum of one per cent and the highest of the base rates published by specified banks, being the latest rates in operation on the date 28 days before the date on which the agreement is made: SI 1989/869 art 4(1) (art 4 substituted by SI 1999/1956; art 4(1) amended by SI 2006/1273). Heads (2) and (3) do not apply to an agreement under which the total amount to be repaid by the debtor to discharge his indebtedness in respect of the amount of credit provided may vary according to a formula which is specified in the agreement and which has effect by reference to movements in the level of any index or to any other factor: SI 1989/869 art 4(2). The specified banks are Bank of England, Bank of Scotland, Barclays Bank plc, Clydesdale Bank plc, Co-operative Bank plc, Coutts & Co, Lloyds TSB Bank plc, Midland Bank plc, National Westminster Bank plc and Royal Bank of Scotland plc: SI 1989/869 art 4(3). For the purpose of art 4(1), 'credit union' means a society registered under the Industrial and Provident Societies Act 1965 by virtue of the Credit Unions Act 1979 s 1, or a society registered under the Credit Unions (Northern Ireland) Order 1985 or a society registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 as a credit union, 'interest' means interest at a rate in accordance with the formula set out in SI 1980/51 reg 7(1), and in that formula as applied by these provisions 'period rate of charge' has the meaning assigned to it in SI 1980/51 reg 7(2): SI 1989/869 art 4(4) (art 4 as so substituted).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(5) AGREEMENTS EXEMPT FROM PROVISIONS OF THE CONSUMER CREDIT ACT 1974/104. Exemption based on connection with a country outside the United Kingdom.

104. Exemption based on connection with a country outside the United Kingdom.

The Secretary of State¹ has ordered² that the Consumer Credit Act 1974 is not to regulate a consumer credit agreement³ made (1) in connection with trade in goods⁴ or services between the United Kingdom⁵ and a country outside the United Kingdom or within a country or between countries outside the United Kingdom, being an agreement under which credit⁶ is provided to the debtor⁷ in the course of a business⁸ carried on by him⁹; or (2) between a listed creditor¹⁰ and a debtor who is (a) a member of any of the armed forces of the United States of America; (b) an employee not habitually resident in the United Kingdom of any of those forces; or (c) any such member's or employee's wife or husband or any other person, whether or not a child of his, whom he wholly or partly maintains and treats as a child of the family¹¹.

1 As to the Secretary of State see para 113 post.

2 Ie under the Consumer Credit Act 1974 s 16(5): see para 101 head (3) ante. As to the power to make orders see para 114 post.

3 For the meaning of 'consumer credit agreement' see para 81 ante.

4 For the meaning of 'goods' see para 82 note 5 ante.

5 For the meaning of 'United Kingdom' see para 70 note 4 ante.

6 For the meaning of 'credit' see para 83 ante.

7 For the meaning of 'debtor' see para 81 note 3 ante.

8 For the meaning of 'business' see para 81 note 7 ante.

9 Consumer Credit (Exempt Agreements) Order 1989, SI 1989/869, art 5(a).

10 As to listed creditors see ibid art 5(b), Sch 1 Pt IV (amended by SI 1989/1841; SI 1989/2337; SI 1993/346; SI 1996/1445).

11 Consumer Credit (Exempt Agreements) Order 1989, SI 1989/869, art 5(b).

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(5) AGREEMENTS EXEMPT FROM PROVISIONS OF THE CONSUMER CREDIT ACT 1974/105. Power to exempt certain consumer hire agreements.

105. Power to exempt certain consumer hire agreements.

The Secretary of State¹ may by order² provide that the Consumer Credit Act 1974 is not to regulate consumer hire agreements³ of a description specified in the order where the owner⁴ is a body corporate⁵ authorised by or under any enactment to supply electricity, gas or water, and the subject of the agreement is a meter or metering equipment, or where the owner is a public telecommunications operator specified in the order⁶.

- 1 As to the Secretary of State see para 113 post.
- 2 As to the power to make orders see para 114 post.
- 3 For the meaning of 'consumer hire agreement' see para 82 ante.
- 4 For the meaning of 'owner' see para 82 note 1 ante.
- 5 As to bodies corporate see COMPANIES; CORPORATIONS.
- 6 Consumer Credit Act 1974 s 16(6) (amended by the Telecommunications Act 1984 s 109(1), Sch 4 para 60(1)). As to the provisions made see para 106 post.

As to the supply of electricity, and as to the supply of gas, see FUEL AND ENERGY vol 19(2) (2007 Reissue) paras 776 et seq, 1033 et seq. As to the supply of water see WATER AND WATERWAYS. As to public telecommunications see TELECOMMUNICATIONS AND BROADCASTING.

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

105-106 Power to exempt certain consumer hire agreements, Exempted consumer hire agreements

As to the supply of electricity see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1033 et seq.

105 Power to exempt certain consumer hire agreements

TEXT AND NOTE 6--Consumer Credit Act 1974 s 16(6) further amended: Communications Act 2003 Sch 17 para 47.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(5) AGREEMENTS EXEMPT FROM PROVISIONS OF THE CONSUMER CREDIT ACT 1974/106. Exempted consumer hire agreements.

106. Exempted consumer hire agreements.

The Secretary of State¹ has ordered² that the Consumer Credit Act 1974 is not to regulate a consumer hire agreement³ where the owner⁴ is a body corporate⁵ authorised by or under any enactment to supply gas, electricity or water and the subject of the agreement is a meter or metering equipment used or to be used in connection with the supply of gas, electricity or water, as the case may be⁶.

- 1 As to the Secretary of State see para 113 post.
- 2 Ie under the Consumer Credit Act 1974 s 16(6) (as amended): see para 105 ante. As to the power to make orders see para 114 post.
- 3 For the meaning of 'consumer hire agreement' see para 82 ante.
- 4 For the meaning of 'owner' see para 82 note 1 ante.
- 5 As to bodies corporate see COMPANIES; CORPORATIONS.
- 6 See the Consumer Credit (Exempt Agreements) Order 1989, SI 1989/869, art 6 (amended by SI 1991/1393). As to the supply of electricity, and as to the supply of gas, see FUEL AND ENERGY vol 19(2) (2007 Reissue) paras 776 et seq, 1033 et seq. As to the supply of water see WATER AND WATERWAYS. As to public telecommunications see TELECOMMUNICATIONS AND BROADCASTING.

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

105-106 Power to exempt certain consumer hire agreements, Exempted consumer hire agreements

As to the supply of electricity see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1033 et seq.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(5) AGREEMENTS EXEMPT FROM PROVISIONS OF THE CONSUMER CREDIT ACT 1974/107. Non-commercial agreements.

107. Non-commercial agreements.

A 'non-commercial agreement' is a consumer credit agreement¹ or a consumer hire agreement² not made by the creditor³ or owner⁴ in the course of a business carried on by him⁵.

Certain provisions of the Consumer Credit Act 1974 apply only to businesses⁶.

1 For the meaning of 'consumer credit agreement' see para 81 ante.

2 For the meaning of 'consumer hire agreement' see para 82 ante.

3 For the meaning of 'creditor' see para 81 note 2 ante.

4 For the meaning of 'owner' see para 82 note 1 ante.

5 Consumer Credit Act 1974 s 189(1). For the meaning of 'business' see para 81 note 7 ante. See also *Hare v Schurek* [1993] CCLR 47, (1993) Times, 28 May, CA.

6 Eg the licensing requirements: see para 119 et seq post.

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(5) AGREEMENTS EXEMPT FROM PROVISIONS OF THE CONSUMER CREDIT ACT 1974/108. Small agreements.

108. Small agreements.

For the purposes of the application of some of the provisions of the Consumer Credit Act 1974, certain small agreements are treated separately¹. 'Small agreement' means either (1) a regulated consumer credit agreement² for credit not exceeding £50, other than a hire-purchase or conditional sale agreement³; or (2) a regulated consumer hire agreement⁴ which does not require the hirer⁵ to make payments exceeding £50⁶. In either case the agreement must be unsecured, or secured by a guarantee or indemnity only⁷, whether or not the guarantee or indemnity is itself secured⁸.

Where two or more small agreements are made at or about the same time between the same parties, and it appears probable that they would instead have been made as a single agreement but for the desire to avoid the operation of provisions of the Consumer Credit Act 1974 which would have applied to that single agreement but which are not applicable to the small agreements⁹, the Act applies to the small agreements as if they were regulated agreements other than small agreements¹⁰.

1 See eg the Consumer Credit Act 1974 s 74(2), (2A); and para 179 post.

2 For the meaning of 'consumer credit agreement' see para 81 ante; and for the meaning of 'regulated' see para 79 ante.

3 Consumer Credit Act 1974 ss 17(1)(a), 189(1) (s 17(1)(a), (b) amended by the Consumer Credit (Increase of Monetary Limits) Order 1983, SI 1983/1878, art 3, Schedule Pt I). See further the Consumer Credit Act 1974 s 188(1), Sch 2 Pt II example 17. For the meaning of 'hire-purchase agreement' see para 95 ante; and for the meaning of 'conditional sale agreement' see para 93 ante.

For the purposes of s 17(1) (as amended), running-account credit is to be taken not to exceed the specified amount (ie £50) if the credit limit does not exceed the specified amount: ss 10(3)(a), 17(2). See also s 188(1), Sch 2 Pt II examples 16, 17, 22. For the meaning of 'running-account credit' see para 84 ante. For the meaning of 'credit limit' see para 84 note 6 ante. As to the power to vary the monetary limit see s 181(1), (2); and para 117 post.

4 For the meaning of 'consumer hire agreement' see para 82 ante.

5 For the meaning of 'hirer' see para 82 note 3 ante.

6 Consumer Credit Act 1974 ss 17(1)(b), 189(1) (s 17(1)(b) as amended: see note 3 supra). As to the meaning of 'payment' see para 84 note 5 ante.

7 As to securities see para 200 et seq post. As to guarantees and indemnities generally see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1013 et seq.

8 See the Consumer Credit Act 1974 ss 17(1), 189(1). 'Small' in relation to an agreement within any category must be construed in accordance with these provisions: see s 189(1).

9 Ie apart from *ibid* s 17(3).

10 *Ibid* s 17(3). If s 17(3) does not apply (ie apart from s 17(4)) to any agreements but would apply if, for any party or parties to any of the agreements, there were substituted an associate of that party, or associates of each of those parties, as the case may be, then s 17(3) applies to the agreements: s 17(4). As to associates see para 92 post.

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

108 Small agreements

NOTE 3--Consumer Credit Act 1974 s 17(2) amended: Consumer Credit Act 2006 s 5(3).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/3. CLASSIFICATION AND DEFINITIONS UNDER THE CONSUMER CREDIT ACT 1974/(6) EXTORTIONATE CREDIT BARGAINS/109. Extortionate credit bargains.

(6) EXTORTIONATE CREDIT BARGAINS

109. Extortionate credit bargains.

Under the Consumer Credit Act 1974¹, if a credit bargain² is extortionate³ the credit agreement⁴ may be reopened so as to do justice between the parties⁵. This is so whether or not the agreement is a regulated agreement⁶. Extortionate credit bargains are dealt with fully elsewhere in this title⁷.

1 Ie the Consumer Credit Act 1974 ss 137, 138, 139, 140 (s 139 as amended): see paras 269-270 post. These provisions replace the Money-lenders Act 1900 s 1 (repealed): see para 7 ante.

2 For the meaning of 'credit bargain' see para 269 note 2 post.

3 As to when bargains are extortionate see the Consumer Credit Act 1974 s 138; and para 269 post.

4 For the meaning of 'credit agreement' see para 269 note 3 post.

5 See the Consumer Credit Act 1974 s 137(1); and para 269 post.

6 Ie whether or not the agreement falls within the monetary limit: see para 269 post. As to the monetary limit see paras 2, 81 ante. For the meaning of 'regulated agreement' see para 79 ante.

7 See paras 269-270 post.

UPDATE

78-109 Classification and Definitions Under the Consumer Credit Act 1974

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

109 Extortionate credit bargains

TEXT AND NOTES--1974 Act ss 137-140 repealed: Consumer Credit Act 2006 s 22(3). See now Consumer Credit Act 1974 ss 140A-140D (added by Consumer Credit Act 2006 ss 19-22) which replace the former provisions on extortionate credit bargains and enable a court to consider whether the relationship between a creditor and debtor arising out of a credit agreement is unfair to the debtor because of the terms of the agreement, the way in which the agreement is operated by the creditor, or any other thing done or not done by or on behalf of the creditor before or after the agreement was made.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(1) REGULATORY POWERS/(i) The Director General of Fair Trading/110. Establishment and functions of the Director General of Fair Trading.

4. REGULATION; POWERS AND LICENSING

(1) REGULATORY POWERS

(i) The Director General of Fair Trading

110. Establishment and functions of the Director General of Fair Trading.

The office of Director General of Fair Trading was established by the Fair Trading Act 1973¹, but the powers conferred and the duties imposed on him by that Act have been substantially enlarged by the Consumer Credit Act 1974, in relation to which he is to perform administrative, supervisory and reviewing functions². It is the duty of the director (1) to administer the licensing system set up by the Consumer Credit Act 1974³; (2) to exercise the adjudicating functions conferred on him by that Act in relation to the issue, renewal, variation, suspension and revocation of licences, and other matters⁴; (3) generally to superintend the working and enforcement of the Act, and regulations made under it⁵; and (4) where necessary or expedient, to take steps to enforce the Act and regulations himself⁶. He also has a duty⁷ to keep under review and from time to time advise the Secretary of State about (a) social and commercial developments in the United Kingdom⁸ and elsewhere which relate to the provision of credit⁹ or bailment¹⁰ to individuals, and related activities¹¹; and (b) the working and enforcement of the Act and regulations made under it¹².

The director must also arrange for the dissemination¹³ to the public in the United Kingdom of such information and advice as may appear to him expedient about the operation of the Act, the credit facilities available to them, and other matters within the scope of his functions under the Act¹⁴.

The director may vary or revoke any determination or direction made or given by him under the Act¹⁵.

With the approval of the Secretary of State and the Treasury¹⁶, the director may charge the specified fee¹⁷ for any service or facility provided by him under the Act¹⁸. Any fees received by the director must be paid into the Consolidated Fund¹⁹.

1 See the Fair Trading Act 1973 ss 1, 2.

2 In addition to those functions expressly conferred on the director by the Consumer Credit Act 1974, the Secretary of State may by order impose other functions upon him: see para 113 post. As to the Secretary of State see para 113 post.

As to financial provision for any increase attributable to the 1974 Act in the sums payable out of money provided by Parliament under the Fair Trading Act 1973 see para 118 post.

3 Consumer Credit Act 1974 s 1(1)(a). As to the licensing system see para 119 et seq post.

4 Ibid s 1(1)(b). For the meaning of 'licence' see para 119 note 3 post.

5 Ibid s 1(1)(c). For the meaning of 'regulations' see para 114 note 2 post.

6 Ibid s 1(1)(d); and para 305 et seq post. The director has a general right in exercising his functions under the Consumer Credit Act 1974 to take account of any matter which appears to him to constitute a breach of a

requirement made by or under the Act, whether or not any sanction for that breach is provided by or under the Act and, if it is so provided, whether or not proceedings have been brought in respect of the breach: s 170(2).

7 le so far as appears to him to be practicable and having regard both to the national interest and the interests of persons carrying on businesses to which the Act applies and their customers: see *ibid* s 1(2).

8 For the meaning of 'United Kingdom' see para 70 note 4 ante.

9 'Credit' is to be construed in accordance with the Consumer Credit Act 1974 s 9 (see para 83 ante): s 189(1).

10 As to bailment see **BAILMENT**.

11 Consumer Credit Act 1974 s 1(2)(a).

12 *Ibid* s 1(2)(b).

13 le in such form and manner as he considers appropriate: see *ibid* s 4.

14 *Ibid* s 4.

15 le other than under *ibid* Pt III (ss 21-42) (as amended) or Pt III as applied by s 147: s 183. Part III (as amended) deals with licensing of credit and hire businesses (see para 119 et seq post), and s 147(1) applies the provisions of Pt III (except s 40: see para 125 post) to an ancillary credit business as they apply to a consumer credit business: see s 147(1); and para 276 post. As to ancillary credit businesses see para 271 et seq post. For the meaning of 'consumer credit business' see para 81 ante.

16 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) paras 512-517.

17 le a fee of an amount specified by general notice: Consumer Credit Act 1974 ss 2(4), 189(1). Provision may be made for reduced fees, or no fees at all, to be paid for certain services or facilities by persons of a specified description; and references to the specified fee must, in such cases, be construed accordingly: ss 2(5), 189(1). As to the various fees to be charged see General Notice 27. As to the refund, in full or in part, of fees paid in respect of an application for a standard licence or variation or renewal of a standard licence see General Notice 48.

'General notice' means a notice published by the director at a time and in a manner appearing to him suitable for securing that the notice is seen within a reasonable time by persons likely to be affected by it: s 189(1).

18 *Ibid* s 2(4).

19 *Ibid* s 190(2). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 711 et seq.

UPDATE

110-135 Regulation; Powers and Licensing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

110-112 The Director General of Fair Trading

Office of Director General of Fair Trading replaced by Office of Fair Trading: see **COMPETITION** vol 18 (2009) PARA 6.

110 Establishment and functions of the [Office of Fair Trading]

TEXT AND NOTES--References to the Director General of Fair Trading are now to the Office of Fair Trading (see COMPETITION vol 18 (2009) PARA 6): Consumer Credit Act 1974 ss 1, 4, 189 (amended by Enterprise Act 2002 Schs 25 para 6(2), (4), (37), (38), 26).

NOTE 1--Fair Trading Act 1973 ss 1, 2 repealed: Enterprise Act 2002 Sch 26.

TEXT AND NOTES 3-6--Also, head (5) to monitor, as it sees fit, businesses being carried on under licences: Consumer Credit Act 1974 s 1(1)(ba) (added by Consumer Credit Act 2006 s 62).

TEXT AND NOTE 14--Refers also to the consumer credit jurisdiction under the Financial Services and Markets Act 2000 Pt XVI (ss 225-234A): Consumer Credit Act 1974 s 4 (amended by Consumer Credit Act 2006 s 61(1)).

TEXT AND NOTE 15--Consumer Credit Act 1974 s 183 substituted: Consumer Credit Act 2006 s 64.

TEXT AND NOTE 19--Refers also to charges, penalties or other sums: Consumer Credit Act 1974 s 190(2) (amended by Consumer Credit Act 2006 s 65).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(1) REGULATORY POWERS/(i) The Director General of Fair Trading/111. Applications to the Director General of Fair Trading.

111. Applications to the Director General of Fair Trading.

Applications to the Director General of Fair Trading¹ under the Consumer Credit Act 1974 are made in various instances, but in particular must be made under the licensing provisions² and where an agreement is unenforceable without an order of the director³.

An application must be in writing, and in such form, and accompanied by such particulars, as the director may specify by general notice⁴. The application must also be accompanied by the specified fee⁵. After he has given preliminary consideration to an application, the director may by notice require the applicant to furnish him with such further information relevant to it as may be described in the notice; and the director may require any information furnished by the applicant, whether at the time of the application or subsequently, to be verified in such manner as he may stipulate⁶. The director may also, by notice, require the applicant to publish details of his application at a time or times and in a manner specified in the notice⁷.

It is an offence to give false or misleading information in connection with any application or request to the director under the Consumer Credit Act 1974⁸.

1 As to the Director General of Fair Trading see para 110 ante.

2 See para 127 et seq post. As to the licensing provisions generally see para 119 et seq post.

3 See para 125 post.

4 Consumer Credit Act 1974 s 6(2). The form of application for a standard consumer credit licence is Form CC1/96: see General Notice 51. The form of application for a group licence is Form CC3/75: see General Notice 4. The requisite particulars are specified on the forms. For the meaning of 'general notice' see para 110 note 17 ante. For the meaning of 'licence' see para 119 note 3 post.

An application is of no effect unless the requirements of the Consumer Credit Act 1974 s 6 are satisfied: s 6(1). No sanction other than this, and the provision in relation to the giving of false information (see the text and note 9 infra), is provided: see further para 301 post.

5 Ibid s 6(2). As to the specified fee see para 110 note 17 ante.

6 Ibid s 6(3).

7 Ibid s 6(4).

8 See ibid s 7; and para 312 post. As to offences and enforcement under the Consumer Credit Act 1974 generally see further para 298 et seq post.

UPDATE

110-135 Regulation; Powers and Licensing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

110-112 The Director General of Fair Trading

Office of Director General of Fair Trading replaced by Office of Fair Trading: see COMPETITION vol 18 (2009) PARA 6.

111 Applications to the [Office of Fair Trading]

TEXT AND NOTES--References to the Director General of Fair Trading are now to the Office of Fair Trading (see COMPETITION vol 18 (2009) PARA 6): Consumer Credit Act 1974 ss 6, 7 (amended by Enterprise Act 2002 Sch 25 para 6(5), (6)).

Consumer Credit Act 1974 s 6(2) amended, s 6(3) substituted, s 6(2A), (5)-(9) added: Consumer Credit Act 2006 ss 27(2), 44, Sch 4. See also Sch 3 para 23; and for transitional provision see Sch 3 para 18.

An applicant for a licence, or for the renewal of a licence, must pay the OFT a charge towards the costs of carrying out its functions under the Consumer Credit Act 1974: see s 6A (added by Consumer Credit Act 2006 s 27(1)). For transitional provision see Sch 3 para 18. See also Consumer Credit Act 1974 (Fees) Order 2010, SI 2010/139.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(1) REGULATORY POWERS/(i) The Director General of Fair Trading/112. Representations and notification of determination.

112. Representations and notification of determination.

Where the Director General of Fair Trading¹ is obliged to invite the submission of representations by any person², he must invite that person, within 21 days after the notice³ containing the invitation is given to him or published or such longer period as the director may allow, (1) to submit his written representations to the director⁴; and (2) to give notice to the director, if he thinks fit, that he wishes to make representations orally⁵. Where any representations are made or submitted under these provisions, the director must take them into account in reaching his determination⁶.

When he has made his determination, the director must give notice of it to the persons who were required to be invited to submit representations about it⁷. Where the invitation was required to be by general notice⁸, he must give general notice of his determination⁹.

Determinations made by the director are subject to appeal¹⁰.

1 As to the Director General of Fair Trading see para 110 ante.

2 The director is obliged to invite the submission of representations where he proposes to make a determination (1) other than in accordance with a licensing application (see para 128 post); (2) excluding a named person from a group licence (see para 128 post); (3) compulsorily varying a licence (see para 131 post); (4) other than in accordance with an application to vary a licence (see para 130 post); (5) suspending or revoking a licence (see para 132 post); (6) other than in accordance with an application to end the suspension of a licence (see para 133 post); (7) other than in accordance with an application for agreements made by an unlicensed trader to be enforceable (see para 125 post); (8) other than in accordance with an application for agreements made with a person carrying on an ancillary credit business while unlicensed to be enforceable (see para 277 post); or (9) other than in accordance with an application for agreements made on the introduction of an unlicensed credit-broker to be enforceable (see para 278 post).

'Representation' includes any condition or warranty, and any other statement or undertaking, whether oral or in writing: Consumer Credit Act 1974 s 189(1). For the meaning of 'licence' see para 119 note 3 post. For the meaning of 'unlicensed' see para 125 note 3 post. For the meaning of 'credit-broker' see para 94 ante.

3 As to the meaning of 'notice' see para 128 note 3 post.

4 Consumer Credit Act 1974 s 34(1)(a).

5 Ibid s 34(1)(b). Where such notice is given, the director must arrange for the oral representations to be heard: s 34(1). In such case, notice of the date, time and place of the hearing must be given to the person affected not less than 21 days before the day fixed, although a shorter period may be allowed by consent: see the Consumer Credit Licensing (Representations) Order 1976, SI 1976/191, art 3. As to the conduct of such hearings see art 4.

6 Consumer Credit Act 1974 s 34(2).

7 Ibid s 34(3). Where the determination is that an application is refused or is granted in terms different from those applied for, or that a person is excluded from a group licence, or that a licence be compulsorily varied, suspended or revoked, then the notice of that determination must contain a statement (1) setting out the director's reasons; (2) setting out the findings of fact upon which the director relies; and (3) declaring that if an aggrieved person wishes to appeal under s 41, he must do so within the period and in the manner prescribed under s 41(1): see the Consumer Credit Licensing (Representations) Order 1976, SI 1976/191, art 6(1). As to appeals see para 135 et seq post. Where the licence is not renewed, or is suspended or revoked, and the director determines to refuse to give directions allowing the carrying out of agreements (see paras 129, 132 post), then when the director gives notice of the determination in relation to the licence, he must also give notice of the refusal to give directions; and the notice must contain a statement setting out and declaring the matters mentioned in heads (1)-(3) supra: see art 6(2).

8 For the meaning of 'general notice' see para 110 note 17 ante. General notice is required for the invitation of representations in the case of (1) compulsory variation of group licences (see para 131 post); (2) suspension or revocation of group licences (see para 132 post).

9 Consumer Credit Act 1974 s 34(3).

10 See para 135 et seq post.

UPDATE

110-135 Regulation; Powers and Licensing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

110-112 The Director General of Fair Trading

Office of Director General of Fair Trading replaced by Office of Fair Trading: see COMPETITION vol 18 (2009) PARA 6.

112 Representations and notification of determination

TEXT AND NOTES--References to the Director General of Fair Trading are now to the Office of Fair Trading (see COMPETITION vol 18 (2009) PARA 6): Consumer Credit Act 1974 s 34 (amended by Enterprise Act 2002 Sch 25 para 6(16)).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(1) REGULATORY POWERS/(ii) The Secretary of State/113. The Secretary of State.

(ii) The Secretary of State

113. The Secretary of State.

The Secretary of State¹ occupies a supervisory role in relation to the Director General of Fair Trading²; and may by order regulate the carrying out by the director of his functions under the Consumer Credit Act 1974³. He may also give general directions indicating considerations to which the director should have particular regard in carrying out his functions under the Act, and may give specific directions on any matter connected with his carrying out of those functions⁴. The Secretary of State may also by order confer on the director additional functions concerning the provision of credit or bailment⁵ to individuals, and related activities⁶.

1 'Secretary of State' means one of Her Majesty's Principal Secretaries of State: see the Interpretation Act 1978 s 5, Sch 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 355. The Secretary of State here concerned is the Secretary of State for Trade and Industry: see the Transfer of Functions (Trade and Industry) Order 1983, SI 1983/1127; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 505 et seq.

2 As to the Director General of Fair Trading see para 110 ante.

3 Consumer Credit Act 1974 s 2(1)(b). As to the functions conferred on the director by the Act see para 110 ante.

For orders made see the Consumer Credit Licensing (Representations) Order 1976, SI 1976/191, which regulates the director's functions under the Consumer Credit Act 1974 s 34(1) (hearing representations: see para 112 ante) and ss 29(5), 32(5) (authorising licensees to carry agreements into effect: see paras 129, 132 post).

4 Ibid s 2(2). References to the functions of the director in this provision do not include the making of a determination to which s 41 or s 150 applies (ie where an appeal lies to the Secretary of State: see para 135 et seq post): s 2(7). The Secretary of State, on giving any directions under s 2(2), must arrange for them to be published in such manner as he thinks most suitable for drawing them to the attention of interested persons: s 2(3). Any such directions must also be set out in the director's annual report under the Fair Trading Act 1973 s 125: see s 125(2) (amended by the Consumer Credit Act 1974 s 5).

5 As to bailment see BAILMENT.

6 Consumer Credit Act 1974 s 2(1)(a). Such an order must be made by statutory instrument and is of no effect unless a draft of the order has been laid before and approved by each House of Parliament: s 2(6). This is an exception to the usual procedure: see para 114 post. At the date at which this volume states the law no such order had been made.

UPDATE

110-135 Regulation; Powers and Licensing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

113 The Secretary of State

TEXT AND NOTES--Reference to the Director General of Fair Trading is now to the Office of Fair Trading (see COMPETITION vol 18 (2009) PARA 6): Consumer Credit Act 1974 s 2 (amended by Enterprise Act 2002 Sch 25 para 6(3)).

NOTE 4--Consumer Credit Act 1974 s 2(7) amended: Consumer Credit Act 2006 s 58(1), Sch 4; SI 2009/1835. For transitional provision see Sch 3 para 28.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(1) REGULATORY POWERS/(ii) The Secretary of State/114. Power to make regulations and orders.

114. Power to make regulations and orders.

Any power of the Secretary of State¹ to make regulations² or orders under the Consumer Credit Act 1974³ is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament⁴.

Where a power to make regulations or orders is exercisable by the Secretary of State by virtue of the Act, regulations or orders so made may (1) make different provision in relation to different cases or classes of case⁵; and (2) exclude certain cases or classes of case⁶; and (3) contain such transitional provisions as the Secretary of State thinks fit⁷.

Regulations may provide that specified expressions, when used as described by the regulations, are to be given the prescribed⁸ meaning, notwithstanding that another meaning is intended by the person using them⁹.

1 As to the Secretary of State see para 113 ante.

2 'Regulations' means regulations made by the Secretary of State: Consumer Credit Act 1974 s 189(1).

3 Ie except under (1) *ibid* s 2(1)(a) (power to confer additional functions on the Director General of Fair Trading: see para 113 ante); (2) s 181 (power to alter monetary limits: see para 117 post); (3) s 192 (power to appoint days for the coming into operation of any provisions of the Act, and to provide for the coming into effect of the repeals and amendments made by the Act: see para 9 ante): see s 182(1).

4 *Ibid* s 182(1). Any power conferred on the Secretary of State by the Consumer Credit Act 1974 to make orders includes power to revoke or vary an order so made: s 182(4). As to subordinate legislation generally see STATUTES vol 44(1) (Reissue) para 1499 et seq.

5 *Ibid* s 182(2)(a). If the Secretary of State is satisfied that it is necessary to do so (1) for the purpose of implementing the Second Council Directive so far as relating to any particular European institution; or (2) for the purpose of implementing the Investment Services Directive so far as relating to any particular European investment firm, he may, on the application or with the consent of the firm or institution, by order direct that all or any of the provisions of (a) any regulations made under the Consumer Credit Act 1974 s 26 (see para 124 post); or (b) any regulations or orders made under the Consumer Credit Act 1974 Pts IV-VIII (Pt IV (ss 43-54) (as amended), Pt V (ss 55-74) (as amended), Pt VI (ss 75-86) (as amended), Pt VII (ss 87-104) (as amended), Pt VIII (ss 105-126) (as amended)), are not to apply to the firm or institution or apply to it with such modifications as may be specified in the order: see the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 63(1); and the Investment Services Regulations 1995, SI 1995/3275, reg 40(1). For the meaning of 'Investment Services Directive' see para 122 note 6 post. As to the meaning of 'European investment firm' see para 122 note 6 post. As to the meaning of 'firm' see para 122 note 6 post. As to the Second Council Directive see para 122 note 6 post. For the meaning of 'European institution' see para 122 note 6 post.

An order under the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 63(1) or the Investment Services Regulations 1995, SI 1995/3275, reg 40 may be subject to conditions: see the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 63(2); and the Investment Services Regulations 1995, SI 1995/3275, reg 40(2). An order under the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 63 or the Investment Services Regulations 1995, SI 1995/3275, reg 40 may be revoked at any time by the Secretary of State; and the Secretary of State may at any time vary any such order on the application or with the consent of the European investment firm or institution to which it applies: see the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 63(3); and the Investment Services Regulations 1995, SI 1995/3275, reg 40(3).

6 Consumer Credit Act 1974 s 182(2)(b). See also note 5 supra.

7 *Ibid* s 182(2)(c).

8 'Prescribed' means prescribed by regulations made by the Secretary of State: *ibid* s 189(1).

9 Ibid s 182(3).

UPDATE

110-135 Regulation; Powers and Licensing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

114 Power to make regulations and orders

NOTE 5--SI 1992/3218, SI 1995/3275 revoked: SI 2001/3649.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(1) REGULATORY POWERS/(ii) The Secretary of State/115. Power to regulate the form and content of agreements and copies of agreements etc.

115. Power to regulate the form and content of agreements and copies of agreements etc.

Regulations¹ must be made as to the form and content of documents embodying regulated agreements².

Regulations may be made as to the form and content of documents to be issued as copies of any executed agreement³, security instrument⁴, or other document referred to in the Consumer Credit Act 1974⁵. Such regulations may in particular (1) require specified information to be included in the prescribed⁶ manner in any copy, and contain requirements to ensure that such information is clearly brought to the attention of a reader of the copy⁷; (2) authorise the omission from a copy of certain material contained in the original, or its inclusion in condensed form⁸. Regulations may provide that a duty imposed by the Consumer Credit Act 1974 to supply a copy of a document referred to in an unexecuted⁹ or an executed agreement is not to apply to documents of a kind specified in the regulations¹⁰.

1 For the meaning of 'regulations' see para 114 note 2 ante.

2 As to the duty to make such regulations see the Consumer Credit Act 1974 s 60(1); and para 161 post. As to the regulations made see the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553 (as amended); and para 162 et seq post. For the meaning of 'regulated agreement' see para 79 ante. A document embodies a provision if the provision is set out either in the document itself or in another document referred to in it: Consumer Credit Act 1974 s 189(1), (4).

3 'Executed agreement' means a document, signed by or on behalf of the parties, embodying the terms of a regulated agreement, or such of them as have been reduced to writing: *ibid* s 189(1). See also para 160 post. As to the form and content of copies see para 174 post. As to the meaning of 'copy' see para 174 text and note 4 post. As to the form and content of agreements see para 161 et seq post.

4 For the meaning of 'security instrument' see para 200 post.

5 Consumer Credit Act 1974 s 180(1). As to regulations made partly under this provision see the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557; and para 174 post.

6 For the meaning of 'prescribed' see para 114 note 8 ante.

7 Consumer Credit Act 1974 s 180(1)(a).

8 See *ibid* s 180(1)(b).

9 'Unexecuted agreement' means a document embodying the terms of a prospective regulated agreement, or such of them as it is intended to reduce to writing: *ibid* s 189(1).

10 *Ibid* s 180(3). As to the kinds of documents specified see para 173 post.

UPDATE

110-135 Regulation; Powers and Licensing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory

Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(1) REGULATORY POWERS/(ii) The Secretary of State/116. Power to regulate the form and content of secondary documents.

116. Power to regulate the form and content of secondary documents.

Regulations¹ may be made as to the form and content of credit cards, trading-checks², receipts, vouchers and other documents or things issued by creditors³, owners⁴ or suppliers⁵ under, or in connection with, regulated agreements⁶, or by other persons in connection with linked transactions⁷. Such regulations may in particular (1) require specified information to be included in the prescribed⁸ manner in documents, and other specified material to be excluded⁹; and (2) contain requirements to ensure that specified information is clearly brought to the attention of the debtor¹⁰ or hirer¹¹, or his relative¹², and that one part of a document is not given insufficient or excessive prominence compared with another¹³.

If a person issues any document or thing in contravention of such regulations, then, as from the time of the contravention but without prejudice to anything done before it, the Consumer Credit Act 1974 applies as if the regulated agreement had been improperly executed¹⁴ by reason of a contravention of any regulations as to its form and content¹⁵.

1 For the meaning of 'regulations' see para 114 note 2 ante. As to the power to make regulations generally see para 114 ante.

2 As to credit-tokens generally see para 88 ante. For the meaning of 'credit' see para 83 ante.

3 For the meaning of 'creditor' see para 81 note 2 ante.

4 For the meaning of 'owner' see para 82 note 1 ante.

5 For the meaning of 'supplier' see para 86 note 8 ante.

6 For the meaning of 'regulated agreement' see para 79 ante. As to the power to make regulations as to the form and content of documents embodying regulated agreements see para 115 ante. See also para 161 et seq post.

7 Consumer Credit Act 1974 s 179(1). As to linked transactions see paras 90 ante, 196-198 post. At the date at which this volume states the law no such regulations had been made.

8 Ie prescribed by regulations made by the Secretary of State: see ibid s 189(1).

9 Ibid s 179(1)(a). Cf s 60(2)(a) (form and content of regulated agreements): see para 161 post.

10 For the meaning of 'debtor' see para 81 note 3 ante.

11 For the meaning of 'hirer' see para 82 note 3 ante.

12 'Relative', except in the Consumer Credit Act 1974 s 184 (see para 92 note 2 ante), means a person who is an associate by virtue of s 184(1) (see para 92 ante): s 189(1).

13 Ibid s 179(1)(b). Cf s 60(2)(b) (form and content of regulated agreements): see para 161 post.

14 For the meaning and consequences of improper execution see para 169 post.

15 Ie under the Consumer Credit Act 1974 s 60(1) (see para 161 post): s 179(2).

UPDATE

110-135 Regulation; Powers and Licensing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(1) REGULATORY POWERS/(ii) The Secretary of State/117. Power to alter monetary limits.

117. Power to alter monetary limits.

The Secretary of State may by order¹ made by statutory instrument amend, or further amend, any of certain provisions of the Consumer Credit Act 1974² which specify a sum of money so as to reduce or increase a sum mentioned³.

In certain specified cases⁴, such an order is of no effect unless a draft of the order has been laid before and approved by each House of Parliament⁵.

1 As to the power of the Secretary of State to make regulations and orders see para 114 ante.

2 Ie the Consumer Credit Act 1974 s 8(2) (see para 81 ante), s 15(1)(c) (see para 82 ante), s 17(1) (see para 108 ante), s 43(3)(a) (see para 144 note 5 head (1) post), s 70(6) (see para 186 note 6 post), s 75(3)(b) (see para 250 note 6 head (2) post), s 77(1) (see para 236 post), s 78(1) (see para 237 post), s 79(1) (see para 240 post), s 84(1) (see para 247 post), s 101(7)(a) (see para 259 post), s 107(1) (see para 202 post), s 108(1) (see para 203 post), s 109(1) (see para 204 post), s 110(1) (see para 205 post), s 118(1)(b) (see para 214 post), s 120(1)(a) (see para 215 post), s 139(5), (7) (see para 270 post), s 155(1) (see para 282 post), s 158(1) (see para 285 post): see s 181(1).

3 Ibid s 181(1). As to the orders made see the Consumer Credit (Further Increase of Monetary Amounts) Order 1998, SI 1998/997; and the Consumer Credit (Increase of Monetary Limits) Order 1983, SI 1983/1878, which is amended by the Consumer Credit (Increase of Monetary Limits) (Amendment) Order 1998, SI 1998/996. The Consumer Credit (Increase of Monetary Amounts) Order 1983, SI 1983/1571, has been revoked: see the Consumer Credit (Further Increase of Monetary Amounts) Order 1998, SI 1998/997, art 2. The Consumer Credit (Further Increase of Monetary Amounts) Order 1998, SI 1998/997, came into force on 1 May 1998: see art 1. The Consumer Credit (Increase of Monetary Limits) (Amendment) Order 1998, SI 1998/996, also came into force on 1 May 1998: see art 1.

4 Ie where an order is made amending the Consumer Credit Act 1974 s 8(2) (see para 81 ante), s 15(1)(c) (see para 82 ante), s 17(1) (see para 108 ante), s 43(3)(a) (see para 144 note 5 head (1) post), s 75(3)(b) (see para 250 note 6 head (2) post) or s 139(5), (7) (see para 270 post): see s 181(2).

5 Ibid s 181(2). As to the usual procedure see para 114 ante.

UPDATE

110-135 Regulation; Powers and Licensing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

117 Power to alter monetary limits

TEXT AND NOTES--Consumer Credit Act 1974 s 181(1), (2) amended: Consumer Credit Act 2006 ss 5(7), 22(4), 53(3), Sch 4.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(1) REGULATORY POWERS/(ii) The Secretary of State/118. Financial provisions.

118. Financial provisions.

All expenses incurred in consequence of the provisions of the Consumer Credit Act 1974 by the Secretary of State¹ or by any other Minister of the Crown or government department, are to be defrayed out of money provided by Parliament². Any increase attributable to the Consumer Credit Act 1974 in the sums payable out of money provided by Parliament under certain other enactments³ is also to be defrayed out of money provided by Parliament⁴.

1 As to the Secretary of State see para 113 ante.

2 See the Consumer Credit Act 1974 s 190(1)(a), (b).

3 Ie the Superannuation Act 1972 or the Fair Trading Act 1973: see the Consumer Credit Act 1974 s 190(1) (c).

4 See ibid s 190(1)(c).

UPDATE

110-135 Regulation; Powers and Licensing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

118 Financial provisions

NOTE 3--Much of Fair Trading Act 1973 replaced by Enterprise Act 2002: see COMPETITION vol 18 (2009) PARA 171 et seq.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(2) LICENSING/(i) Administration/119. The register.

(2) LICENSING

(i) Administration

119. The register.

It is the duty of the Director General of Fair Trading¹ to establish and maintain a register, in which he must cause to be kept particulars² of (1) applications not yet determined³; (2) licences which are in force, or have at any time been suspended or revoked⁴, with details of any variation of the terms of a licence⁵; (3) decisions given by the director under the Consumer Credit Act 1974, and any appeal from those decisions⁶; and (4) such other matters, if any, as the director thinks fit⁷.

On payment of the specified fee⁸, any person is entitled (a) to inspect the register⁹ during ordinary office hours and take copies of any entry¹⁰; or (b) to obtain from the director a copy, certified by him to be correct, of any entry in the register¹¹. The director must give general notice of the place or places where, and times when, the register or a copy of it may be inspected¹².

1 As to the Director General of Fair Trading see para 110 ante.

2 The Consumer Credit Act 1974 s 35 has effect as if the particulars to be included in the register included: (1) particulars of information received by the director under the Investment Services Regulations 1995, SI 1995/3275, reg 12 or reg 14; (2) particulars of prohibitions and restrictions imposed by him under reg 15 or reg 16 (see para 126 post); (3) such particulars of documents received by him under reg 3(3), Sch 3 para 3(2), 4(3), or 5(3) as he thinks fit; and (4) particulars of such other matters, if any, arising under the Investment Services Regulations 1995, SI 1995/3275, as he thinks fit: reg 37.

The Consumer Credit Act 1974 s 35 also has effect as if the particulars to be included in the register included: (a) particulars of information received by the director under the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 13 (the Bank of England's obligation to inform if an institution ceases to be a European institution, or if a European institution ceases to carry on any particular home-regulated activity in the United Kingdom); (b) particulars of prohibitions and restrictions imposed by the director under reg 18 or reg 19 (see para 126 post); (c) such particulars of documents received by him under reg 3(8), Sch 2 paras 2(3), 4(3) or 5(4) as he thinks fit; and (d) particulars of such other matters, if any, arising under the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, as he thinks fit: reg 60. For the meaning of 'European institution' and for the meaning of 'home-regulated activity' see para 122 note 6 post. For the meaning of 'United Kingdom' see para 70 note 4 ante.

3 Ie applications for the issue (see para 127 post), variation (see para 130 post) or renewal (see para 129 post) of licences, or for ending the suspension of a licence (see para 133 post): see the Consumer Credit Act 1974 s 35(1)(a). 'Licence' means a licence under the Consumer Credit Act 1974 Pt III (ss 21-42) (as amended), including those provisions as applied to ancillary credit businesses by s 147: s 189(1). The licensing provisions (except s 40: see para 125 post) contained in Pt III (as amended) apply to an ancillary credit business as they apply to a consumer credit business: see s 147(1); and para 276 post. As to ancillary credit businesses see para 271 et seq post. For the meaning of 'consumer credit business' see para 81 ante. For the meaning of 'credit' see para 83 ante.

4 As to suspension and revocation of licences see para 132 post.

5 Consumer Credit Act 1974 s 35(1)(b). As to variation of licences see paras 130-131 post.

6 Ibid s 35(1)(c). As to appeals see para 135 et seq post.

7 Ibid s 35(1)(d). The director must give general notice of the various matters required to be entered in the register, and of any change in the requirements made under s 35(1)(d): s 35(2). For the meaning of 'general

notice' see para 110 note 17 ante. The particulars currently required to be entered in the register are set out in General Notice 33.

8 As to the specified fee see para 110 note 17 ante. As to the meaning of 'payment' see para 84 note 5 ante.

9 'Register' means the register kept by the director under the Consumer Credit Act 1974 s 35: s 189(1). If he thinks fit, the director may determine that the right of inspection under s 35(3)(a) is to be exercisable in relation to a copy of the register instead of, or in addition to, the original: s 35(4).

10 Ibid s 35(3)(a).

11 Ibid s 35(3)(b). As to the evidential value of certified copies see CIVIL PROCEDURE vol 11 (2009) PARAS 887, 906-907.

12 Ibid s 35(5). The register may be inspected at the Office of Fair Trading, Craven House, 40 Uxbridge Road, Ealing, London W5 2BS, between the hours of 9.30 am and 4.00 pm on weekdays, save for Maundy Thursday when the register closes at 12.30 pm; the register is closed on Saturdays, Sundays and public holidays: General Notice 49.

UPDATE

110-135 Regulation; Powers and Licensing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

119 The register

TEXT AND NOTES--Consumer Credit Act 1974 s 35 amended: Enterprise Act 2002 Sch 25 para 6(17); Consumer Credit Act 2006 ss 34(7), 37(2), 43(1).

TEXT AND NOTES 1-7--The OFT must also cause to be kept in the register any copy of any notice or other document relating to a consumer credit EEA firm which is given to the OFT by the Financial Services Authority for inclusion in the register: Consumer Credit Act 1974 s 35(1A) (added by SI 2001/3649; and amended by Enterprise Act 2002 Sch 25 para 6(17)).

'Consumer credit EEA firm' means an EEA firm falling within the Financial Services and Markets Act 2000 Sch 3 para 5(a), (b) or (c) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 315 NOTE 1 heads (1)-(5)) carrying on, or seeking to carry on, consumer credit business, consumer hire business or ancillary credit business for which a licence would be required under the Consumer Credit Act 1974 but for the Financial Services and Markets Act 2000 Sch 3 para 15(3) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 315 NOTE 48): Consumer Credit Act 1974 s 189A (added by SI 2001/3649).

NOTE 2--As a consequence of the coming into force of the Financial Services and Markets Act 2000, SI 1992/3218 and SI 1995/3275 are revoked: SI 2001/3649.

NOTE 3--Definition of 'licence' in Consumer Credit Act 1974 s 189(1) amended: Consumer Credit Act 2006 Sch 4.

NOTE 9--Definition of 'register' in Consumer Credit Act 1974 s 189(1) amended: Enterprise Act 2002 Sch 25 para 6(38).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(2) LICENSING/(i) Administration/120. Duty to notify changes.

120. Duty to notify changes.

The licensee¹ must give the Director General of Fair Trading² notice of a change³ in any particulars entered in the register⁴ within 21 working days⁵ after the change takes place, and the director must cause any necessary amendment to be made in the register⁶.

Within 21 working days after:

- 17 (1) any change takes place in the officers of (a) a body corporate, or an unincorporated body of persons, which is the licensee under a standard licence⁷; or (b) a body corporate which is a controller of a body corporate which is such a licensee⁸; or
- 18 (2) a body corporate which is such a licensee becomes aware that a person has become or ceased to be a controller of the body corporate⁹; or
- 19 (3) any change takes place in the members of a partnership which is such a licensee¹⁰,

the licensee must give the director notice of the change¹¹.

Where in pursuance of these requirements the director is given notice of any change, not being such a change as to cause a licence to terminate¹², he may by notice require the licensee to furnish him with such information, verified in such manner, as he may stipulate¹³.

A person who fails to give notice¹⁴ within the period required commits an offence¹⁵.

1 As to the application of the licensing provisions to ancillary credit businesses see para 276 post. As to ancillary credit businesses see para 271 et seq post.

2 As to the Director General of Fair Trading see para 110 ante.

3 Ie not being a change resulting from action taken by the director: see the Consumer Credit Act 1974 s 36(1).

4 Ie in respect of a standard licence (see para 122 post) or the licensee under ibid s 35(1)(d) (see para 119 ante): see s 36(1). As to the establishment and contents of the register generally see para 119 ante. For the meaning of 'licence' see para 119 note 3 ante.

5 'Working day' means any day other than Saturday or Sunday, Christmas Day or Good Friday, or a bank holiday within the meaning given by the Banking and Financial Dealings Act 1971 s 1 (see TIME vol 97 (2010) PARA 321): Consumer Credit Act 1974 s 189(1).

6 Ibid s 36(1).

7 Ibid s 36(2)(a)(i). As to bodies corporate and unincorporated bodies see CORPORATIONS vol 9(2) (2006 Reissue) para 1101.

8 Ibid s 36(2)(a)(ii). For the meaning of 'controller' see para 92 note 5 ante. Within 14 working days after any change takes place in the officers of a body corporate which is a controller of another body corporate which is a licensee under a standard licence, the controller must give the licensee notice of the change: s 36(3).

9 Ibid s 36(2)(b). Within 14 working days after a person becomes or ceases to be a controller of a body corporate which is a licensee under a standard licence, that person must give the licensee notice of the fact: s 36(4).

10 Ibid s 36(2)(c). The changes to be notified include a change on the amalgamation of the partnership with another firm, or a change whereby the number of partners is reduced to one: see s 36(2)(c). Where a change in a partnership has the result that the business ceases to be carried on under the name, or any of the names, specified in a standard licence, then the licence ceases to have effect: s 36(5). As to the significance of the name under which a licensee carries on business see para 122 note 7 post. As to partnership generally see PARTNERSHIP.

11 Ibid s 36(2).

12 Ie where ibid s 36(5) does not apply: see s 36(6).

13 Ibid s 36(6).

14 Ie to the director or a licensee under ibid s 36: see s 39(3).

15 Ibid s 39(3). The penalty on summary conviction is a fine not exceeding the prescribed sum, and on conviction on indictment is a maximum of two years' imprisonment or a fine or both: s 167(1), Sch 1 (amended by virtue of the Magistrates' Courts Act 1980 s 32(2)). The 'prescribed sum' means £5,000 or such sum as is for the time being substituted: see the Magistrates' Courts Act 1980 s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)(c)); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 141. As to offences and enforcement under the Consumer Credit Act 1974 see further para 298 et seq post.

UPDATE

110-135 Regulation; Powers and Licensing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

120 Duty to notify changes

TEXT AND NOTES--Consumer Credit Act 1974 ss 36, 39 amended: Enterprise Act 2002 Sch 25 para 6(18), (19) (Enterprise Act 2002 Sch 25 para 6(18) amended by Consumer Credit Act 2006 Sch 4).

See also Consumer Credit Act 1974 s 36A (added by Consumer Credit Act 2006 s 45) (further duties to notify changes etc). See further Consumer Credit Act 1974 s 39A (ss 39A-39C added by Consumer Credit Act 2006 ss 52-54) which confers a power on the OFT to impose civil penalties on persons who do not comply with a requirement imposed under the Consumer Credit Act 1974 s 36A. Section 39B sets out further provision relating to civil penalties. The OFT must prepare and publish a statement of policy in relation to how it exercises, or how it proposes to exercise, its powers under s 39A: see s 39C. For transitional provision see Consumer Credit Act 2006 Sch 3 paras 24, 25.

The OFT may by notice to a person require him (1) to provide such information as may be specified or described in the notice; or (2) to produce such documents as may be so specified or described: see Consumer Credit Act 1974 s 36B (added by Consumer Credit Act 2006 s 46).

The OFT may by notice to a licensee under a licence require him to secure that access to the premises specified or described in the notice is given to an officer of an enforcement authority in order for the officer (a) to observe the carrying on of a business under the licence by the licensee; or (b) to inspect such documents of the

licensee relating to such a business as are (i) specified or described in the notice; and (ii) situated on the premises: see Consumer Credit Act 1974 s 36C (added by Consumer Credit Act 2006 s 47).

Provision is made with respect to entry to premises under warrant: Consumer Credit Act 1974 s 36D (added by Consumer Credit Act 2006 s 48).

If on an application made by the OFT it appears to the court that a person (the 'information defaulter') has failed to do something that he was required to do by virtue of s 36B or 36C, the court may make an order which may require the information defaulter (A) to do the thing that it appears he failed to do within such period as may be specified in the order; (B) otherwise to take such steps to remedy the consequences of the failure as may be so specified: see Consumer Credit Act 1974 s 36E (added by Consumer Credit Act 2006 s 49).

Provision is made in relation to officers of enforcement authorities other than the OFT: see Consumer Credit Act 1974 s 36F (added by Consumer Credit Act 2006 s 50).

TEXT AND NOTES 12, 13--Consumer Credit Act 1974 s 36(6) repealed: Consumer Credit Act 2006 Sch 4.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(2) LICENSING/(ii) Requirement of a Licence/121. Businesses needing a licence.

(ii) Requirement of a Licence

121. Businesses needing a licence.

A licence issued by the Director General of Fair Trading¹ is required to carry on a consumer credit business², a consumer hire business³ or an ancillary credit business⁴. However, a local authority⁵ does not need a licence to carry on any business⁶; and a body corporate empowered by a public general Act naming it to carry on a business does not need a licence to do so⁷.

A person who engages in any activities for which a licence is required, when he is not a licensee under a licence covering those activities, commits an offence⁸. A further sanction is that any agreements entered into during the period that a trader is without a licence, and any agreements introduced by an unlicensed credit-broker, are unenforceable except on the director's order⁹.

1 As to the Director General of Fair Trading see para 110 ante. For the meaning of 'licence' see para 119 note 3 ante. As to the issue of licences see para 127 et seq post; and as to the types of licences see para 122 post.

2 Consumer Credit Act 1974 s 21(1). For the meaning of 'consumer credit business' see para 81 ante. For the meaning of 'credit' see para 83 ante. As to the meaning of 'business' see para 81 note 7 ante. See also *Town Investments Ltd v Department of the Environment*[1978] AC 359, [1977] 1 All ER 813, HL. A one-off loan is not a business: *Hare v Schurek* [1993] CCLR 47, CA.

The Consumer Credit Act 1974 s 21 does not apply to the carrying on of any description of consumer credit business:

3 (1) before 31 July 1989 in the case of a consumer credit business which is carried on by an individual and in the course of which only the following regulated consumer credit agreements (excluding agreements made before that date) are made, namely (a) agreements for fixed-sum credit not exceeding £30; and (b) agreements for running-account credit where the credit limit does not exceed that amount (s 192(1), Sch 3 para 5(1)(a) (Sch 3 para 5 substituted by the Consumer Credit Act 1974 (Commencement No 10) Order 1989, SI 1989/1128, art 3, Schedule));

4 (2) before 1 October 1977 in the case of any other description of consumer credit business (Consumer Credit Act 1974 Sch 3 para 5(1)(b) (as so substituted)).

For the meaning of 'individual' see para 80 note 1 ante. For the meaning of 'regulated agreement' see para 79 ante. For the meaning of 'fixed-sum credit' see para 85 ante; and for the meaning of 'running-account credit' see para 84 ante. For the meaning of 'credit limit' see para 84 note 6 ante.

Where the person carrying on a consumer credit business or a consumer hire business applied for a licence before 31 July 1989 (in the case of a consumer credit business falling within head (1) supra) or before 1 October 1977 (in the case of any other description of consumer credit business or in the case of any consumer hire business) he is to be deemed to have been granted on 31 July 1989 or 1 October 1977, as the case may be, a licence covering that business and continuing in force until the licence applied for is granted or, if the application is refused, until the end of the appeal period: Sch 3 para 5(2) (as so substituted). 'Appeal period' means the period beginning on the first day on which an appeal to the Secretary of State may be brought and ending on the last day on which it may be brought or, if it is brought, ending on its final determination or abandonment: s 189(1). As to the prescribed period for appeal see para 136 note 3 post; and as to appeals generally see para 135 et seq post. As to the Secretary of State see para 113 ante. For the meaning of 'consumer hire business' see para 82 ante.

3 Ibid s 21(1). Section 21 does not apply to the carrying on of any description of consumer hire business before 1 October 1977: Sch 3 para 5(1)(c) (as substituted: see note 2 supra). For the effect of an application for a licence before this date see note 2 supra.

4 See *ibid* ss 21(1), 147(1). As to the application of the licensing provisions to ancillary credit businesses see para 276 post. As to ancillary credit businesses see para 271 et seq post.

Section 21(1) does not apply, by virtue of s 147(1), to the carrying on of any ancillary credit business before 3 August 1976 in the case of any business so far as it comprises or relates to debt-adjusting, debt-counselling, debt-collecting (see para 273 post) or the operation of a credit reference agency (see para 274 post); Sch 3 para 44(1) (Sch 3 para 44 amended by the Consumer Credit Act 1974 (Commencement No 1) Order 1975, SI 1975/2123, art 3(b); and the Consumer Credit Act 1974 (Commencement No 4) Order 1977, SI 1977/2163, art 3, Schedule).

Nor does the Consumer Credit Act 1974 s 21(1) apply to the carrying on of any ancillary credit business before 1 July 1978 so far as it comprises or relates to credit brokerage (see para 272 post), not being a business which is carried on by an individual and in the course of which introductions are effected only of individuals desiring to obtain credit under debtor-creditor-supplier agreements (see para 87 ante):

- 5 (1) which fall within s 12(a) (see para 87 head (1) ante) and where, in the case of any such agreement (a) the person carrying on the business would be willing to sell the goods which are the subject of the agreement to the debtor under a transaction not financed by credit; and (b) the amount of credit does not exceed £30 (Sch 3 para 44(1A)(a) (as so amended));
- 6 (2) which fall within s 12(b) or s 12(c) (see para 87 head (2) or (3) ante) and where, in the case of any such agreement (a) the person carrying on the business is the supplier; (b) the creditor is a person referred to in s 145(2)(a)(i) (see para 272 post); and (c) the amount of credit or, in the case of an agreement for running-account credit, the credit limit does not exceed £30 (Sch 3 para 44(1A)(b) (as so amended)).

For the meaning of 'goods' see para 82 note 5 ante; and for the meaning of 'financed' see para 83 note 8 ante. For the meaning of 'debtor' see para 81 note 3 post. For the meaning of 'supplier' see para 86 note 8 ante. For the meaning of 'creditor' see para 81 note 2 post.

Further, s 21(1) does not apply to the carrying on of any ancillary credit business before the day appointed for these purposes in the case of any description of ancillary credit business in relation to which no day is appointed under the provisions mentioned above: Sch 3 para 44(1B) (as so amended).

Where the person carrying on an ancillary credit business applied for a licence before 3 August 1976 in the case of an ancillary credit business of a description to which Sch 3 para 44(1) (as amended) applies, or before 1 July 1978 in the case of an ancillary credit business of a description to which Sch 3 para 44(1A) (as amended) applies, or before the day appointed in the case of an ancillary credit business to which Sch 3 para 44(1B) (as amended) applies, he is to be deemed to have been granted on 3 August 1976, or 1 July 1978, or the day appointed, as the case may be, a licence covering the description of ancillary credit business in question and continuing in force until the licence applied for is granted or, if the application is refused, until the end of the appeal period: Sch 3 para 44(2) (as so amended).

Nothing in s 21, s 39(1) (see the text and note 8 infra) or s 147(1) prevents a European institution from carrying on in the United Kingdom any listed activity which it is authorised or permitted to carry on in its home state: see the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 5(1)(c). However, this provision does not apply in relation to a European institution in respect of which there is a prohibition under reg 18 (see para 126 post) in force: see reg 5(2)(c). For the meaning of 'European institution' see para 122 note 6 post. 'Listed activity' means an activity included in the list of activities subject to mutual recognition set out in the regulations: see Sch 1. 'Quasi-European institution' means an institution which is not a European institution but which would be such an institution if the requirements set out in the regulations had been complied with: see reg 3(4). 'Home state', in relation to an institution incorporated in or formed under the law of another member state, means that state: reg 2. For the meaning of 'European authorised institution' see para 100 note 13 ante. For the meaning of 'member state' see para 100 note 13 ante. As to the requirements to be complied with by or in relation to European institutions see the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 3(8), Sch 2.

Nothing in the Consumer Credit Act 1974 s 21, s 39(1) (see the text and note 8 infra) or s 147(1) prevents a European investment firm from providing in the United Kingdom any listed service which it is authorised to provide in its home state: Investment Services Regulations 1995, SI 1995/3275, reg 5(1)(b). However, this provision does not apply in relation to a European investment firm in respect of which there is a prohibition under reg 15 (see para 126 post) in force: see reg 5(2)(b). As to the meaning of 'European investment firm' see para 122 note 6 post. For the meaning of 'United Kingdom' see para 70 note 4 ante. For the meaning of 'listed service' see para 122 note 6 post. 'Home state', in relation to an investment firm which has no registered office, means the EEA state in which the firm's head office is situated; and, in relation to an investment firm which has a registered office, means the EEA state in which that office is situated: reg 2(1). For the meaning of 'investment firm' see para 122 note 6 post. For the meaning of 'EEA state' see para 122 note 6 post.

- 5 For the meaning of 'local authority' see para 100 note 3 ante.

6 Consumer Credit Act 1974 s 21(2). Consumer credit agreements of certain types made by local authorities are exempt in any case: see para 100 ante.

7 Ibid s 21(3). As to public general Acts see STATUTES vol 44(1) (Reissue) para 1210. As to bodies corporate generally see COMPANIES; CORPORATIONS. As to the position of European investment firms see paras 126, 127 note 3 post.

8 Ibid s 39(1). Such an offence is punishable on summary conviction by a fine not exceeding the prescribed sum, and on conviction on indictment by a maximum of two years' imprisonment or a fine or both: s 167(1), Sch 1 (amended by the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see para 120 note 15 ante. As to offences and enforcement under the Consumer Credit Act 1974 see further para 298 et seq post.

As to the effect of s 39(1) on a European institution see note 4 supra.

9 As to the unenforceability of (1) an agreement made in the course of an unlicensed consumer credit and consumer hire business; (2) an agreement made with a person carrying on an unlicensed ancillary credit business; or (3) a regulated agreement made on the introduction of an unlicensed credit-broker see paras 125, 277-278 post. For the meaning of 'unlicensed' see para 125 note 3 post.

UPDATE

110-135 Regulation; Powers and Licensing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

121 Businesses needing a licence

TEXT AND NOTES 2-4--Consumer Credit Act 1974 s 21(1) amended: Consumer Credit Act 2006 s 33(1).

NOTE 2--Definition of 'appeal period' in Consumer Credit Act 1974 s 189(1) amended: Consumer Credit Act 2006 s 58(4); SI 2009/1835. For transitional provision see Consumer Credit Act 2006 Sch 3 para 28.

NOTE 4--As a consequence of the coming into force of the Financial Services and Markets Act 2000, SI 1992/3218 and SI 1995/3275 are revoked: SI 2001/3649.

TEXT AND NOTE 8--Consumer Credit Act 1974 s 39 amended: Enterprise Act 2002 Sch 25 para 6(19).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(2) LICENSING/(ii) Requirement of a Licence/122. Types of licence.

122. Types of licence.

There are two types of licence, namely standard licences and group licences¹.

'Standard licence' means a licence issued by the Director General of Fair Trading² to a person³ named in it, on an application by him⁴, and which, during the prescribed period⁵, covers such activities as are described in it⁶. A standard licence authorises the licensee to carry on a business under the name or names specified in it, but not under any other name⁷.

'Group licence' means a licence issued by the director⁸, either on the application of any person⁹ or of his own motion, which, during such period as the director thinks fit or, if he thinks fit, indefinitely, covers such persons¹⁰ and activities as are described in it¹¹. The director may issue a group licence only if it appears to him that the public interest is better served by doing so than by obliging the persons concerned to apply separately for standard licences¹².

A licence is not assignable or transmissible on death or in any other way¹³, although after the death of the holder of a standard licence his business may be carried on under the licence by some other person for a certain period¹⁴.

1 See the Consumer Credit Act 1974 s 22(1). For the meaning of 'licence' see para 119 note 3 ante. As to the need for a licence see para 121 ante.

2 As to the Director General of Fair Trading see para 110 ante.

3 Except in the case of a partnership or an unincorporated body of persons, a standard licence may not be issued to more than one person: Consumer Credit Act 1974 s 22(3). However, as an incorporated body is a separate legal person, distinct from the personalities of its members, it may be the recipient of a licence. As to bodies corporate see COMPANIES; CORPORATIONS. Where a standard licence is issued to a partnership or unincorporated body it must be issued in the name of the partnership or body: s 22(4).

4 As to the form of application see para 111 note 4 ante. As to the determination of an application see para 128 post.

5 As prescribed by regulations made by the Secretary of State: Consumer Credit Act 1974 s 189(1). For the meaning of 'regulations' see para 114 note 2 ante. As to the Secretary of State see para 113 ante. The period prescribed is a period of five years beginning with a date specified for that purpose in the licence: Consumer Credit (Period of Standard Licence) Regulations 1975, SI 1975/2124, reg 2 (amended by SI 1991/817).

6 Consumer Credit Act 1974 ss 22(1)(a), 189(1). Section 22 has effect as if (1) it included provision that a standard licence held by a European institution or quasi-European institution does not cover the carrying on by that institution of any home-regulated activities (see the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 57); and (2) as if it included provision that a standard licence held by a European investment firm or quasi-European investment firm does not cover the provision by that firm of any listed services (see the Investment Services Regulations 1995, SI 1995/3275, reg 34). 'European institution' means a European authorised institution or a European subsidiary: Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 3(1). For the meaning of 'European authorised institution' see para 100 note 13 ante. 'European subsidiary' means a financial institution which (a) is incorporated in or formed under the law of another member state; (b) is a 90% subsidiary undertaking of a credit institution which is incorporated in or formed under the law of that state, and is a European authorised institution or a quasi-European authorised institution; and (c) the conditions specified in the regulations are complied with: see reg 3. 'Home-regulated activity' means any listed activity in relation to which a supervisory authority in the institution's home state has regulatory functions and which, in the case of a European subsidiary, it is carrying on in its home state: see the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 3(7). The 'relevant supervisory authority', in relation to another member state, means the authority in that state which has regulatory functions in relation to the acceptance of deposits from the public, whether or not it also has such functions in relation to one or more other listed activities: Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 2. For the meaning of 'listed activity' see para 121 note 4 ante. 'Firm' includes an individual and a body corporate: Investment Services Regulations 1995, SI 1995/3275, reg

2(1). 'Investment firm' means any person (other than one to whom the Investment Services Directive does not apply by virtue of the provisions of art 2(2)) whose regular occupation or business is the provision of any one or more core investment services to third parties on a professional basis: see the Investment Services Regulations 1995, SI 1995/3275, reg 2(1), (2), (3). 'The Investment Services Directive' means the Council Directive on investment services in the securities field, ie EC Council Directive 93/22 (OJ L141, 11.6.93, p 27): Investment Services Regulations 1995, SI 1995/3275, reg 2(1). The Investment Services Directive art 2(2) is set out in the Investment Services Regulations 1995, SI 1995/3275, reg 2(3), Sch 2. For these purposes, where a person (the first person) provides one of the services referred to in the Investment Services Directive Annex Section A para 1(a) (ie the reception and transmission of orders) solely for the account of and under the full and unconditional responsibility of another person (the second person), that service must be regarded as a service provided not by the first person but by the second person: Investment Services Regulations 1995, SI 1995/3275, reg 2(4). The Investment Services Directive Annex is set out in the Investment Services Regulations 1995, SI 1995/3275, reg 2(1), Sch 1. 'Core investment service' means a service listed in the Investment Services Directive Annex Section A: see the Investment Services Regulations 1995, SI 1995/3275, reg 2(1). An investment firm is a European investment firm for these purposes if (i) it is incorporated in or formed under the law of another EEA state; (ii) its head office is in that state; (iii) it is for the time being either a European authorised institution or authorised to act as an investment firm by a relevant supervisory authority in that state; and (iv) in the case of an investment firm which is not a European authorised institution and was not on 1 January 1996 a European subsidiary, the requirements of reg 3(3), Sch 3 para 1 have been complied with in relation to its provision of a service or its establishment of a branch: regs 2(1), 3(1). 'Another EEA state' means an EEA state other than the United Kingdom: reg 2(1). 'EEA state' means a state which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2 May 1992 (ie the agreement on the European economic area with final act and declarations; Cmd 2073) as adjusted by the Protocol signed at Brussels on 17 March 1993 (ie the protocol adjusting the agreement on the European economic area with final act and declarations; Cmd 2183): Investment Services Regulations 1995, SI 1995/3275, reg 2(1). For the meaning of 'United Kingdom' see para 70 note 4 ante. 'European authorised institution' means a credit institution whose authorisation under the First Council Directive and the Second Council Directive covers one or more core investment services: reg 2(1). 'The First Council Directive' means the First Council Directive (as amended) on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions, ie EC Council Directive 77/780 (OJ L322, 17.12.77, p 30) (as amended): Investment Services Regulations 1995, SI 1995/3275, reg 2(1), (2B). 'The Second Council Directive' means the Second Council Directive (as amended) on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending the First Council Directive, ie EC Council Directive 89/646 (OJ L386, 30.12.89, p 1): Investment Services Regulations 1995, SI 1995/3275, reg 2(1), (2B). 'Credit institution' means a credit institution as defined in the First Council Directive art 1, that is to say, an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account: Investment Services Regulations 1995, SI 1995/3275, reg 2(1). 'Relevant supervisory authority', in relation to another EEA state, means the authority in that state which has regulatory functions in relation to any core investment service, whether or not it also has such functions in relation to any non-core investment service: reg 2(1). 'European subsidiary' has the same meaning as in the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218 (see supra), as those regulations have effect immediately before 1 January 1996: Investment Services Regulations 1995, SI 1995/3275, reg 2(1). 'Branch' means one or more places of business established or proposed to be established in the same EEA state for the purpose of providing listed services: reg 2(1). 'Establish', in relation to a branch, means establish the place of business or, as the case may be, the first place of business which constitutes the branch: reg 2(1). 'Listed service' means a service listed in the Investment Services Directive Annex A or C: Investment Services Regulations 1995, SI 1995/3275, reg 2(1). 'Quasi-European investment firm' means an investment firm other than a European authorised institution which is not a European investment firm but which would be such an investment firm if the requirements of Sch 3 para 1 had been complied with in relation to its provision of a service or its establishment of a branch: regs 2(1), 3(2).

7 Consumer Credit Act 1974 s 24. A licensee under a standard licence who carries on business under a name not specified in the licence commits an offence: s 39(2). Such an offence is punishable on summary conviction by a fine not exceeding the prescribed sum, and on conviction on indictment by a maximum of two years' imprisonment or a fine or both: s 167(1), Sch 1 (amended by the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see para 120 note 15 ante. As to offences and enforcement under the Consumer Credit Act 1974 see further para 298 et seq post.

Any agreement made by a licensee under an unauthorised name is unenforceable except on an order of the Director General of Fair Trading, as the licensee would not, under such a name, be licensed: see further para 125 ante. A trivial variation not calculated to mislead would probably not amount to a contravention of this provision, and the question whether variance amounts to a contravention is a question of law: *Peizer v Lefkowitz* [1912] 2 KB 235, CA.

As to business names generally see the Business Names Act 1985; and COMPANIES.

8 General notice must be given of the issue of any group licence, whether on application or not: Consumer Credit Act 1974 s 22(8). For the meaning of 'general notice' see para 110 note 17 ante.

9 A group licence issued on the application of any person must be issued to that person: ibid s 22(8). As to the form of application see para 111 note 4 ante. As to the determination of an application see para 128 post.

10 The persons covered by a group licence may be described by general words, whether or not coupled with the exclusion of named persons, or in any other way the director thinks fit: ibid s 22(6). As to appeals against exclusion, and as to appeals generally, see para 135 et seq post. The fact that a person is covered by a group licence in respect of certain activities does not prevent a standard licence being issued to him in respect of those activities, or any of them: s 22(7). In the case of a group licence, 'licensee' includes any person covered by the licence: s 189(1).

11 Ibid ss 22(1)(b), 189(1).

12 Ibid s 22(5).

13 Ibid s 22(2).

14 Ie under ibid s 37 (see para 134 post): see s 22(2).

UPDATE

110-135 Regulation; Powers and Licensing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

122 Types of licence

TEXT AND NOTES--Consumer Credit Act 1974 s 22 amended: Enterprise Act 2002 Sch 25 para 6(7); Consumer Credit Act 2006 ss 33(2); 34(1), (2), Sch 4. For regulations made under the 1974 Act s 22 see Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007, SI 2007/1167; and PARA 263-268.

NOTE 5--SI 1975/2124 revoked: SI 2007/1167.

TEXT AND NOTES 6, 7--For provision relating to applications for standard licences see 1974 Act s 24A (added by Consumer Credit Act 2006 s 28).

NOTE 6--SI 1992/3218m SI 1995/3275 revoked: SI 2001/3649.

NOTE 7--1974 Act s 39 amended: Enterprise Act 2002 Sch 25 para 6(19).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(2) LICENSING/(ii) Requirement of a Licence/123. Authorisation of specific activities.

123. Authorisation of specific activities.

A licence to carry on a business¹ generally covers all lawful activities done in the course of that business, whether by the licensee² or other persons on his behalf³. However, a licence covers the canvassing off trade premises⁴ of debtor-creditor-supplier agreements⁵ or regulated consumer hire agreements⁶ only if, and to the extent that, the licence specifically so provides; and such a provision may not be included in a group licence⁷.

Moreover, a licence may limit the activities it covers, whether by authorising the licensee to enter into certain types of agreement only, or in any other way⁸. A person who engages in activities for which a licence is required when he is not a licensee under a licence covering those activities commits an offence⁹.

1 For the meaning of 'licence' see para 119 note 3 ante. As to the need for a licence see para 121 ante. As to the application of the licensing provisions to ancillary credit businesses see para 276 post. As to ancillary credit businesses see para 271 et seq post. For the meaning of 'business' see para 81 note 7 ante.

2 As to the meaning of 'licensee' see para 122 note 10 ante.

3 Consumer Credit Act 1974 s 23(1).

4 As to canvassing off trade premises see para 151 post.

5 For the meaning of 'debtor-creditor-supplier agreement' see para 87 ante.

6 For the meaning of 'consumer hire agreement' see para 82 ante; and for the meaning of 'regulated' see para 79 ante.

7 Consumer Credit Act 1974 s 23(3). For the meaning of 'group licence' see para 122 ante. Regulations may be made specifying other activities which, if engaged in by or on behalf of the person carrying on a business, require to be covered by an express term in his licence: s 23(4). At the date at which this volume states the law no such regulations had been made. For the meaning of 'regulations' see para 114 note 2 ante.

8 Ibid s 23(2).

9 See ibid s 39(1); and para 121 ante.

UPDATE

110-135 Regulation; Powers and Licensing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

123 Authorisation of specific activities

TEXT AND NOTES--Consumer Credit Act 1974 s 23 amended: Consumer Credit Act 2006 s 33(3), (4), Sch 4.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(2) LICENSING/(ii) Requirement of a Licence/124. Conduct of business.

124. Conduct of business.

Regulations¹ may be made as to the conduct by a licensee of his business². These may in particular specify the books and other records to be kept by him³, and the information to be furnished by him to persons with whom he does business or seeks to do business, and the way in which such information is to be furnished⁴. Regulations may include provisions further regulating the seeking of business by a licensee who carries on a consumer credit business or a consumer hire business⁵. Regulations may also include provisions regulating the collection and dissemination of information by credit reference agencies⁶.

1 For the meaning of 'regulations' see para 114 note 2 ante. As to the power to make regulations see para 114 ante. As to the regulations made see the Consumer Credit (Conduct of Business) (Credit References) Regulations 1977, SI 1977/330 (see para 284 post); and the Consumer Credit (Conduct of Business) (Pawn Records) Regulations 1983, SI 1983/1565 (see para 209 post).

2 Consumer Credit Act 1974 s 26. As to the application of the licensing provisions see para 121 ante. As to the application of the licensing provisions to ancillary credit businesses see para 276 post. As to ancillary credit businesses see para 271 et seq post. For the meaning of 'business' see para 81 note 7 ante. As to the meaning of 'licensee' see para 122 note 10 ante.

Section 26, and any existing regulations made otherwise than by virtue of s 54 (see the text and note 5 infra), have effect as if any reference to a licensee included (1) a reference to a European institution carrying on a Consumer Credit Act business (see the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 59(1)); and (2) a reference to a European investment firm carrying on any Consumer Credit Act business where that business consists of the provision of a listed service (see the Investment Services Regulations 1995, SI 1995/3275, reg 36(1)). In connection with European institutions, 'existing regulations' means regulations made under the Consumer Credit Act 1974 s 26 before 1 January 1993 (or in relation to EFTA states 1 January 1994): see the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, regs 2, 59(3). For the purposes of European investment firms, 'existing regulations' means regulations made under the Consumer Credit Act 1974 s 26 before 1 January 1996: see the Investment Services Regulations 1995, SI 1995/3275, reg 2(1), 36(3). For the meaning of 'European institution' see para 122 note 6 ante. 'Consumer Credit Act business' means consumer credit business, consumer hire business or ancillary credit business: see the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 2; and the Investment Services Regulations 1995, SI 1995/3275, reg 2(1). As to the meaning of 'European investment firm' see para 122 note 6 ante. For the meaning of 'consumer credit business' see para 81 ante. For the meaning of 'consumer hire business' see para 82 ante. For the meaning of 'ancillary credit business' see para 271 post. For the meaning of 'listed service' see para 122 note 6 ante.

3 Consumer Credit Act 1974 s 26(a).

4 Ibid s 26(b).

5 Ibid s 54. Contravention of any regulation made under s 26 by virtue of s 54 is an offence: see s 167(2). Such an offence is punishable on summary conviction by a fine not exceeding the prescribed sum, and on conviction on indictment by a maximum of two years' imprisonment or a fine or both: s 167(1), Sch 1 (amended by the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see para 120 note 15 ante. As to offences and enforcement under the Consumer Credit Act 1974 see further para 298 et seq post. As to the seeking of business see paras 143 et seq, 279 et seq post.

Section 54, and any existing regulations made by virtue of that provision, have effect as if any reference to a licensee who carries on a consumer credit business included a reference to a European investment firm which carries on such a business: Investment Services Regulations 1995, SI 1995/3275, reg 36(2).

Section 54, and any existing regulations made by virtue of that provision, also have effect as if any reference to a licensee who carries on a consumer credit business, a consumer hire business or a business of credit brokerage, debt-adjusting or debt-counselling included a reference to a European institution who carries on such a business: Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 59(2).

6 Consumer Credit Act 1974 s 147(2). As to credit reference agencies see paras 274, 284-287 post.

UPDATE

110-135 Regulation; Powers and Licensing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

124 Conduct of business

TEXT AND NOTES 1-4--Regulations may be made as to (1) the conduct by a licensee of his business; and (2) the conduct by a consumer credit EEA firm of its business in the United Kingdom: Consumer Credit Act 1974 s 26(1) (substituted by SI 2001/3649). For the meaning of 'consumer credit EEA firm' see PARA 119 TEXT AND NOTES 1-7.

The regulations may in particular specify (a) the books or other records to be kept by any person to whom the regulations apply; (b) the information to be furnished by such a person to those persons with whom (i) that person does business, or (ii) that person seeks to do business, and the way in which that information is to be furnished: Consumer Credit Act 1974 s 26(2) (substituted by SI 2001/3649).

NOTE 2--As a consequence of the coming into force of the Financial Services and Markets Act 2000, SI 1992/3218 and SI 1995/3275 are revoked: SI 2001/3649.

TEXT AND NOTE 5--For 'a licensee' read 'a person to whom the regulations apply': Consumer Credit Act 1974 s 54 (amended by SI 2001/3649).

TEXT AND NOTE 6--Consumer Credit Act 1974 s 147(2) amended: Consumer Credit Act 2006 Sch 4.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(2) LICENSING/(ii) Requirement of a Licence/125. Agreements enforceable only on an order of the Director General of Fair Trading.

125. Agreements enforceable only on an order of the Director General of Fair Trading.

A regulated agreement¹, other than a non-commercial agreement², if made when the creditor or owner was unlicensed³, is enforceable against the debtor⁴ or hirer⁵ only where the Director General of Fair Trading⁶ has made an order⁷ which applies to the agreement⁸. Where during any period an unlicensed person, known as 'the trader', was carrying on a consumer credit business or consumer hire business⁹, he or his successor in title may apply to the director for an order that regulated agreements made by the trader during that period are to be treated as if he had been licensed¹⁰.

Unless the director determines to make an order in accordance with the application, he must by notice¹¹ (1) inform the applicant, giving his reasons, that, as the case may be, he is minded to refuse the application or to grant it in terms different from those applied for, describing them; and (2) invite the applicant to submit representations¹² in support of his application¹³.

In determining whether or not to make an order in respect of any period, the director must consider in addition to any other relevant factors (a) how far, if at all, debtors or hirers under regulated agreements made by the trader during that period were prejudiced by the trader's conduct; (b) whether or not the director would have been likely to grant a licence covering that period on an application by the trader; and (c) the degree of culpability for the failure to obtain a licence¹⁴.

If the director thinks fit, he may limit an order to specified agreements, or agreements of a specified description or made at a specified time¹⁵. He may also make the order conditional on the doing of specified acts by the applicant¹⁶.

The applicant may appeal against a refusal to make an order in accordance with the terms of the application¹⁷.

Similar provisions apply to (i) an agreement made with a person carrying on an unlicensed ancillary credit business¹⁸; or (ii) a regulated agreement made on the introduction of an unlicensed credit-broker¹⁹.

1 For the meaning of 'regulated agreement' see para 79 ante.

2 'Non-commercial agreement' means a consumer credit agreement or a consumer hire agreement not made by the creditor or owner in the course of a business carried on by him: Consumer Credit Act 1974 s 189(1). For the meaning of 'consumer credit agreement' see para 81 ante. For the meaning of 'consumer hire agreement' see para 82 ante. For the meaning of 'creditor' see para 81 note 2 ante. For the meaning of 'owner' see para 82 note 1 ante. For the meaning of 'business' see para 81 note 7 ante.

3 'Unlicensed' means without a licence, but applies only in relation to acts for which a licence is required: ibid s 189(1). For the meaning of 'licence' see para 119 note 3 ante. As to the need for a licence see para 121 ante. As to the issue of licences see para 127 et seq post; and as to the types of licences see para 122 ante.

4 For the meaning of 'debtor' see para 81 note 3 ante.

5 For the meaning of 'hirer' see para 82 note 3 ante.

6 As to the Director General of Fair Trading see para 110 ante.

7 Ie under the Consumer Credit Act 1974 s 40: see s 40(1).

8 Ibid s 40(1). Section 40 does not apply to a regulated agreement made in the course of any business before the day specified or referred to in Sch 3 para 5(1) (as substituted) (see para 121 note 2 ante) in relation to the description of business in question: s 192(1), Sch 3 para 7 (substituted by the Consumer Credit Act 1974 (Commencement No 2) Order 1977, SI 1977/325, art 3(1), Sch 1 para 3).

The Consumer Credit Act 1974 s 40 has effect as if the reference to a regulated agreement, other than a non-commercial agreement, made when the creditor or owner was unlicensed did not include a reference to such an agreement made when the creditor or owner was a relevant firm or relevant institution: see the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 61(1); and the Investment Services Regulations 1995, SI 1995/3275, reg 38(1). For these purposes, 'relevant firm' means a European investment firm (1) to which reg 5(1) applies by virtue of reg 5(1)(b) (see para 121 note 4 ante); and (2) which is not precluded from making the agreement or introductions in question by a restriction imposed under reg 16 (see para 126 post): reg 38(4). For these purposes, 'relevant institution' means a European institution (a) to which the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 5(1)(c) applies (see para 121 note 4 ante); and (b) which is not precluded from making the agreement or introductions in question by a restriction imposed under reg 19 (see para 126 post): reg 61(4). As to the meaning of 'European investment firm' see para 122 note 6 ante. For the meaning of 'European institution' see para 122 note 6 ante.

9 For the meaning of 'consumer credit business' see para 81 ante. For the meaning of 'consumer hire business' see para 82 ante.

10 See the Consumer Credit Act 1974 s 40(2). 'Licensed', in relation to any act, means authorised by a licence to do the act or cause or permit another person to do it: s 189(1). The form of application is Form CC5/91: General Notice 41. As to the fee payable see General Notices 35, 41; and para 110 note 17 ante. As to applications generally see para 111 ante.

11 In before determining the application: see the Consumer Credit Act 1974 s 40(3). As to the meaning of 'notice' see para 128 note 3 post.

12 In accordance with ibid s 34 (see para 112 ante): see s 40(3).

13 Ibid s 40(3).

14 Ibid s 40(4).

15 Ibid s 40(5)(a).

16 Ibid s 40(5)(b).

17 See para 135 et seq post.

18 See the Consumer Credit Act 1974 s 148; and para 277 post. Section 40 does not apply to ancillary credit business: see s 147(1). As to the application of the licensing provisions generally to ancillary credit businesses see para 276 post. As to ancillary credit businesses generally see para 271 et seq post.

19 See ibid s 149; and para 278 post. For the meaning of 'credit-broker' see para 94 ante. As to credit brokerage generally see para 272 post.

UPDATE

110-135 Regulation; Powers and Licensing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

125 Agreements enforceable only on an order of the Director General of Fair Trading

TEXT AND NOTES--Consumer Credit Act 1974 s 40 amended: Enterprise Act 2002 Sch 25 para 6(20); Consumer Credit Act 2006 s 26, Sch 4.

TEXT AND NOTES 1-16--The Consumer Credit Act 1974 s 40 (apart from s 40(1)) does not apply to a regulated agreement made by a consumer credit EEA firm unless at the time it was made that firm was precluded from entering into it as a result of (1) a consumer credit prohibition imposed under the Financial Services and Markets Act 2000 s 203; or (2) a restriction imposed on the firm under s 204: Consumer Credit Act 1974 s 40(6) (added by SI 2001/3649; and amended by Consumer Credit Act 2006 s 26(3), Sch 4). For the meaning of 'consumer credit EEA firm' see PARA 119 TEXT AND NOTES 1-7. See further FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 464.

NOTE 8--SI 1992/3218, SI 1995/3275 revoked: SI 2001/3649.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(2) LICENSING/(ii) Requirement of a Licence/126. Prohibition and restriction.

126. Prohibition and restriction.

The Director General of Fair Trading¹ may impose on a European investment firm or European institution² a prohibition on carrying on, or purporting to carry on, in the United Kingdom³ any Consumer Credit Act business⁴ which consists of or includes provision of any one or more listed service or home-regulated activities⁵. Such a prohibition may be absolute or may be imposed for a specified period or until the occurrence of a specified event or until specified conditions are complied with; and any period, event or conditions specified in the case of a prohibition may be varied by the director on the application of the investment firm or institution concerned⁶. Any prohibition may be withdrawn by written notice served by the director on the investment firm or institution concerned; and any such notice takes effect on such date as is specified in the notice⁷.

Where it appears to the director that the situation as respects a European investment firm or institution is such that the prohibition powers⁸ are exercisable, the director may, instead of imposing a prohibition, impose such restriction as appears to him desirable⁹. Any such restriction may (1) be withdrawn; or (2) be varied with the agreement of the investment firm or institution concerned, by written notice served by the director on the investment firm or institution; and any such notice takes effect on such date as is specified in the notice¹⁰.

An investment firm or institution which contravenes or fails to comply with a restriction is guilty of an offence¹¹; and the fact that a restriction has not been complied with¹² is a ground for the imposition of a prohibition¹³.

Where the director proposes, in relation to a European investment firm or institution, to impose a prohibition, to impose a restriction or to vary a restriction otherwise than with the agreement of the firm or institution, the director must by notice (a) inform the firm or institution that, as the case may be, the director proposes to impose the prohibition or restriction or vary the restriction, stating his reasons; and (b) invite the firm or institution to submit representations as to the proposal¹⁴. Similarly, where the director proposes to refuse an application made by a European investment firm or institution for the revocation of a prohibition or restriction, the director must by notice (i) inform the firm or institution that the director proposes to refuse the application, stating his reasons; and (ii) invite the firm or institution to submit representations in support of the application¹⁵.

If he imposes the prohibition or restriction or varies the restriction, the director may give directions authorising the firm or institution to carry into effect agreements made before the coming into force of the prohibition, restriction or variation¹⁶.

Where the director imposes a prohibition or restriction or varies a restriction, he must serve a copy of the prohibition, restriction or variation on the Securities and Investments Board¹⁷ or the Bank of England and on the relevant supervisory authority¹⁸ in the firm's or institution's home state¹⁹.

1 As to the Director General of Fair Trading see para 110 ante.

2 As to the meaning of 'European investment firm' see para 122 note 6 ante. For the meaning of 'investment firm' see para 122 note 6 ante. For the meaning of 'European institution' see para 122 note 6 ante.

3 For the meaning of 'United Kingdom' see para 70 note 4 ante.

4 For the meaning of 'Consumer Credit Act business' see para 124 note 2 ante.

5 See the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 18(1); and the Investment Services Regulations 1995, SI 1995/3275, reg 15(1). For the meaning of 'listed service' see para 122 note 6 ante. For the meaning of 'home-regulated activity' see para 122 note 6 ante.

The director may impose a prohibition if it appears to him that the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 18(2) or the the Investment Services Regulations 1995, SI 1995/3275, reg 15(2) has been or is likely to be contravened as respects a European investment firm or institution: see the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 18(1); and the Investment Services Regulations 1995, SI 1995/3275, reg 15(1). The Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 18(2) and the Investment Services Regulations 1995, SI 1995/3275, reg 15(2) are contravened as respects a European investment firm or institution if (1) the investment firm or institution or any of the investment firm's or institution's employees, agents or associates, whether past or present; or (2) where the investment firm or institution is a body corporate, any controller of the firm or institution or an associate of any such controller, does any of the things specified in the Consumer Credit Act 1974 s 25(2)(a)-(d) (see para 127 heads (a)-(d) post): see the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 18(2); and the Investment Services Regulations 1995, SI 1995/3275, reg 15(2). As to associates see para 92 ante. For the meaning of 'controller' see para 92 note 5 ante. For the meaning of 'European investment firm' and 'European institution' see para 122 note 6 ante.

6 See the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 18(3); and the Investment Services Regulations 1995, SI 1995/3275, reg 15(3).

7 See the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 18(4); and the Investment Services Regulations 1995, SI 1995/3275 reg 15(4).

8 Ie the powers conferred by the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 18(1) and the Investment Services Regulations 1995, SI 1995/3275, reg 15(1): see the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 18(2); and the Investment Services Regulations 1995, SI 1995/3275, reg 16(2).

9 See the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 18(2); and the Investment Services Regulations 1995, SI 1995/3275, reg 16(2). For these purposes, 'restriction' means a direction that a European investment firm or institution may not provide in the United Kingdom, otherwise than in accordance with such condition or conditions as may be specified in the direction, any Consumer Credit Act business which (1) consists of or includes the provision of any listed service or home-regulated service; and (2) is specified in the direction: see the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 19(1); and the Investment Services Regulations 1995, SI 1995/3275, reg 16(1).

10 See the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 19(3); and the Investment Services Regulations 1995, SI 1995/3275, reg 16(3).

11 See the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 19(4); and the Investment Services Regulations 1995, SI 1995/3275, reg 16(4). An investment firm or institution guilty of an offence is liable on conviction on indictment to a fine, and on summary conviction to a fine not exceeding the statutory maximum: see the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 19(4); and the Investment Services Regulations 1995, SI 1995/3275, reg 16(4).

12 Ie whether or not constituting an offence under the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 19(4) or the Investment Services Regulations 1995, SI 1995/3275, reg 16(4): see the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 19(5); and the Investment Services Regulations 1995, SI 1995/3275, reg 16(5).

13 Ie under the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 18 and the Investment Services Regulations 1995, SI 1995/3275, reg 15: see the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 19(5); and the Investment Services Regulations 1995, SI 1995/3275, reg 16(5).

14 Ie in accordance with the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 18(6), Sch 5 para 4 and the Investment Services Regulations 1995, SI 1995/3275, reg 15(6), Sch 5 para 4: see the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, Sch 5 para 2(1), (2); and the Investment Services Regulations 1995, SI 1995/3275, Sch 5 para 2(1), (2).

The director must invite the firm or institution, within 21 days after the notice containing the invitation is given to it or such longer period as the director may allow, to submit its representations in writing to the director and to give notice to the director, if it thinks fit, that it wishes to make representations orally: see the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, Sch 5 para 4(1); and the Investment Services Regulations 1995, SI 1995/3275, Sch 5 para 4(1). Where such notice is given, the director must

arrange for the oral representations to be heard: see the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, Sch 5 para 4(1); and the Investment Services Regulations 1995, SI 1995/3275, Sch 5 para 4(1). As to representations generally see para 112 ante.

In reaching his determination, the director must take into account any representations submitted or made under this provision: see the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, Sch 5 para 4(2); and the Investment Services Regulations 1995, SI 1995/3275, Sch 5 para 4(2). The director must give notice of his determination to the firm or institution: see the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, Sch 5 para 4(3); and the Investment Services Regulations 1995, SI 1995/3275, Sch 5 para 4(3). As to appeals against his determination see para 135 et seq post.

15 In accordance with the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, Sch 5 para 4 and the Investment Services Regulations 1995, SI 1995/3275, Sch 5 para 4 (see note 14 supra): see the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, Sch 5 para 3; and the Investment Services Regulations 1995, SI 1995/3275, Sch 5 para 3.

16 See the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, Sch 5 para 2(3); and the Investment Services Regulations 1995, SI 1995/3275, Sch 5 para 2(3). A prohibition, restriction or variation does not come into force before the end of the appeal period: see the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, Sch 5 para 2(4); and the Investment Services Regulations 1995, SI 1995/3275, Sch 5 para 2(4). For the meaning of 'appeal period' see para 121 note 2 ante.

17 As to the Securities and Investments Board see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 4.

18 For the meaning of 'relevant supervisory authority' see para 122 note 6 ante.

19 See the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, Sch 5 para 2(5); and the Investment Services Regulations 1995, SI 1995/3275, Sch 5 para 2(5). For the meaning of 'home state' see para 121 note 4 ante.

UPDATE

110-135 Regulation; Powers and Licensing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

126 Prohibition and restriction

TEXT AND NOTES--As a consequence of the coming into force of the Financial Services and Markets Act 2000, SI 1992/3218 and SI 1995/3275 are revoked: SI 2001/3649. See further FINANCIAL SERVICES AND INSTITUTIONS.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(2) LICENSING/(iii) Issue of a Licence/127. Issue of standard licences.

(iii) Issue of a Licence

127. Issue of standard licences.

Where any person applies to the Director General of Fair Trading¹ for a standard licence² he must be granted one if he satisfies the director that (1) the applicant is a fit person to engage in activities covered by the licence³; and (2) the name or names under which he applies to be licensed is or are not misleading or otherwise undesirable⁴.

In determining whether an applicant for a standard licence is a fit person to engage in any activities⁵, the director must have regard to any circumstances appearing to him to be relevant⁶, and in particular to any evidence tending to show that the applicant, or any of his employees, agents or associates⁷ (whether past or present), has (a) committed any offence involving fraud or other dishonesty, or violence⁸; (b) contravened any provision made by or under the Consumer Credit Act 1974 or any other enactment regulating the provision of credit to, or other transactions with, individuals⁹; (c) practised discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business¹⁰; or (d) engaged in business practices appearing to the director to be deceitful or oppressive, or otherwise unfair or improper, whether unlawful or not¹¹.

1 As to the Director General of Fair Trading see para 110 ante. As to applications to the director see para 111 ante.

2 For the meaning of 'standard licence' see para 122 ante. For the meaning of 'licence' see para 119 note 3 ante.

3 Consumer Credit Act 1974 s 25(1)(a). See also *North Wales Motor Auctions Ltd v Secretary of State for Trade* [1981] CCLR 1 (fit person).

The Consumer Credit Act 1974 s 25 has effect as if it included provision that a standard licence is not to be issued to a European investment firm or quasi-European investment firm in respect of any listed services, or to a European institution or quasi-European institution in respect of any home-regulated activities: see the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 58(1)(a); and the Investment Services Regulations 1995, SI 1995/3275, reg 35(a). As to the meaning of 'European investment firm' see para 122 note 6 ante. For the meaning of 'quasi-European investment firm' see para 122 note 6 ante. For the meaning of 'listed service' see para 122 note 6 ante. For the meaning of 'European institution' and 'home-regulated activity' see para 122 note 6 ante. As to the meaning of 'quasi-European institution' see para 121 note 4 ante.

The Consumer Credit Act 1974 s 25 further has effect as if it included provision that where a United Kingdom authorised institution applies for a standard licence, and states in its application that it proposes to carry on a Consumer Credit Act business which consists of or includes one or more listed activities, the director shall not grant the licence unless the United Kingdom authority has notified the director that, were the licence granted, the United Kingdom authority would not by reason of that proposal exercise any of its powers (within the meaning of the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 58(3)): see reg 58(2). A 'United Kingdom authorised institution' is a credit institution that is incorporated in or formed under the law of any part of the United Kingdom, has its principal place of business in the United Kingdom, and is for the time being authorised by the Bank of England under the Banking Act 1987 or by the Building Societies Commission under the Building Societies Act 1986 (see generally FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 791 et seq; and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2046): see reg 20(2).

4 Consumer Credit Act 1974 s 25(1)(b). It is an offence to trade under a different name than that which is eventually specified in the licence: see para 122 note 7 ante. For the meaning of 'licensed' see para 125 note 10 ante. As to misleading trading styles see *Purnell Secretarial Services Ltd v Lease Management Services Ltd* [1994] CCLR 127, CA.

5 ie activities covered by the licence.

6 As to the determination of applications see para 128 post. As to the director's right to take account of any matter which appears to him to constitute a breach of a requirement made by or under the Consumer Credit Act 1974 see para 110 note 6 ante.

7 As to employees generally see EMPLOYMENT vol 39 (2009) PARA 2. As to agency see paras 176-178 post; and AGENCY. As to associates see para 92 ante. In this context 'associate' also includes a business associate: Consumer Credit Act 1974 s 25(3). As 'business associate' is not defined in the Act, it is not clear how much this adds to the usual definition, although it seems to be intended to cover the situation where no formal relationship exists between persons who in fact share in certain commercial enterprises.

Where the applicant is a body corporate these provisions apply to any person appearing to the director to be a controller of the body corporate or an associate of any such person: see s 25(2).

8 Ibid s 25(2)(a).

9 Ibid s 25(2)(b). Section 25 has effect as if the reference to any provision made by or under the Consumer Credit Act 1974, or by or under any enactment regulating the provision of credit to individuals or other transactions with individuals, included a reference to any corresponding provision in force in another member state, or another EEA State: see the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 58(1)(b); and the Investment Services Regulations 1995, SI 1995/3275, reg 35(b). For the meaning of 'member state' see para 100 note 13 ante. For the meaning of 'another EEA state' see para 122 note 6 ante.

10 Consumer Credit Act 1974 s 25(2)(c). As to discrimination see DISCRIMINATION.

11 Ibid s 25(2)(d).

UPDATE

110-135 Regulation; Powers and Licensing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

127-128 Issue of a Licence

See also Consumer Credit Act 1974 ss 28A-28C (added by Consumer Credit Act 2006 ss 35-37) which relate to periodic payments for indefinite licences. For regulations made under 1974 Act s 28A see Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007, SI 2007/1167; and PARA 263-268.

127 Issue of standard licences

TEXT AND NOTES--Consumer Credit Act 1974 s 25 further amended: Enterprise Act 2002 Sch 25 para 6(8); Consumer Credit Act 2006 s 29, Sch 4.

The OFT must prepare and publish guidance in relation to how it determines, or how it proposes to determine, whether persons are fit persons as mentioned in the Consumer Credit Act 1974 s 25: see Consumer Credit Act 1974 s 25A (added by Consumer Credit Act 2006 s 30). For transitional provision see Consumer Credit Act 2006 Sch 3 para 19.

TEXT AND NOTES 1-4--See further 1974 Act s 25(1B), (1C) (added by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649; 1974 Act s 25(1C) amended by the Capital Requirements Regulations

2006, SI 2006/3221; and the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007, SI 2007/126).

NOTES 3, 9--As a consequence of the coming into force of the Financial Services and Markets Act 2000, SI 1992/3218 , SI 1995/3275 revoked: SI 2001/3649.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(2) LICENSING/(iii) Issue of a Licence/128. Determination of applications.

128. Determination of applications.

Where the Director General of Fair Trading¹ is minded to refuse an application for a licence², or to grant it in terms different from those applied for, then he must, before determining it, by notice³ (1) inform the applicant that he is so minded, giving his reasons⁴; and (2) invite him to submit representations⁵ in support of his application⁶.

If the director grants an application in terms different from those applied for, then he must, whether or not the applicant appeals⁷, issue the licence in the terms approved by him, unless the applicant informs him by notice that he does not desire a licence in those terms⁸.

Where the director intends to issue a group licence⁹, and in doing so to exclude any person from the group by name, he must, before determining the matter, (a) give notice of that fact to that person, giving his reasons¹⁰; and (b) invite him to submit representations¹¹ against his exclusion¹².

1 As to the Director General of Fair Trading see para 110 ante.

2 For the meaning of 'licence' see para 119 note 3 ante. As to the need for, and types of, licences see paras 121-122 ante. As to applications to the director see para 111 ante.

3 'Notice' means notice in writing: Consumer Credit Act 1974 s 189(1).

4 Ibid s 27(1)(a). If the director intends to issue a licence in terms different from those applied for he must describe them in the notice: see s 27(1)(a).

5 Ie under ibid s 34: see para 112 ante.

6 Ibid s 27(1)(b).

7 As to appeals against the refusal to issue a licence in accordance with the terms of the application, and as to appeals generally, see para 135 et seq post.

8 Consumer Credit Act 1974 s 27(2).

9 Ie whether on the application of any person or not: see ibid s 28. For the meaning of 'group licence' see para 122 ante.

10 Ibid s 28(a).

11 Ie under ibid s 34: see para 112 ante.

12 Ibid s 28(b). As to appeals against exclusion see para 135 et seq post.

UPDATE

110-135 Regulation; Powers and Licensing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

127-128 Issue of a Licence

See also Consumer Credit Act 1974 ss 28A-28C (added by Consumer Credit Act 2006 ss 35-37) which relate to periodic payments for indefinite licences. For regulations made under 1974 Act s 28A see Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007, SI 2007/1167; and PARA 263-268.

128 Determination of applications

TEXT AND NOTES--Consumer Credit Act 1974 ss 27, 28 amended: Enterprise Act 2002 Sch 25 para 6(9), (10).

See also Consumer Credit Act 1974 s 27A (added by Consumer Credit Act 2006 s 33(5)) (consumer credit EEA firms).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(2) LICENSING/(iv) Renewal, Variation, Suspension and Termination of Licences/129. Renewal of licences.

(iv) Renewal, Variation, Suspension and Termination of Licences

129. Renewal of licences.

If the licensee under a standard licence¹, or the original applicant for, or any licensee under, a group licence of limited duration², wishes the Director General of Fair Trading³ to renew the licence (whether on the same terms, except as to expiry, or on varied terms), then, during the period specified by the director by general notice⁴ or such longer period as the director may allow, he must make an application to the director for its renewal⁵. The director may also of his own motion renew any group licence⁶. The same provisions⁷ and considerations apply to renewal as apply to the issue of licences⁸.

Until an application for renewal is determined and, where an appeal lies from the determination, until the end of the appeal period⁹, the old licence continues in force even where it would apart from this provision have expired earlier¹⁰.

Where renewal is refused, the director may give directions authorising the licensee to carry into effect agreements made by him before the expiry of the licence¹¹.

General notice must be given of the renewal of a group licence¹².

1 For the meaning of 'standard licence' see para 122 ante; and as to the duration of such a licence see para 122 note 5 ante. For the meaning of 'licence' see para 119 note 3 ante.

2 For the meaning of 'group licence' see para 122 ante. As to the meaning of 'licensee' in the case of a group licence see para 122 note 10 ante. As to the duration of group licences see para 122 ante.

3 As to the Director General of Fair Trading see para 110 ante.

4 Application for the renewal of a standard licence may be made during the period which commences on the day three calendar months before the date of expiry of the licence in respect of which renewal is sought and ends on the day one calendar month before the date of expiry of that licence: General Notice 53. For the meaning of 'general notice' see para 110 note 17 ante.

5 Consumer Credit Act 1974 s 29(1). Application to renew a standard consumer credit licence is to be made in the Form CC501/96: General Notice 53. Application to renew a group licence must be in writing, signed and dated, and must be accompanied by the following particulars: (1) the name of the group covered by the licence; (2) the name, address and authority of the person seeking renewal; (3) if renewal is sought on varied terms, the terms of the renewed licence which is required and the reasons for seeking the variation sought; (4) a statement of why it is considered that the public interest would be better served by the renewal of the group licence than by obliging the persons to whom the group licence applies to apply separately for standard licences: General Notice 16.

6 Consumer Credit Act 1974 s 29(2). Cf the director's power to issue such a licence of his own motion: see para 122 ante.

7 Ie ibid ss 21-28 (see para 121 et seq ante). However, the provisions relating to notice to, and representations by, any person excluded by name from a group licence (see s 28; and para 128 ante) do not apply to a person who was already excluded in the licence up for renewal: see s 29(3).

8 See ibid s 29(3).

9 For the meaning of 'appeal period' see para 121 note 2 ante. As to appeals against a refusal to renew a licence in accordance with the terms of the application, and as to appeals generally, see para 135 et seq post.

10 Consumer Credit Act 1974 s 29(4).

11 Ibid s 29(5). The director must determine whether or not to give such directions not later than the time when he gives notice of his determination to refuse to renew the licence (see para 112 ante): see the Consumer Credit Licensing (Representations) Order 1976, SI 1976/191, art 5. Notice of any determination to refuse directions must be given at the same time as the notice in respect of the determination to refuse to renew the licence: see art 6(2); and para 112 ante. In the case of a standard licence, notice of the refusal to give directions must be given to the licensee: art 6(2)(a). In the case of a group licence, the notice must be given to the applicant for renewal (art 6(2)(b)); and the director must give notice to the licensee in respect of whom directions are refused, or give general notice of the refusal to give directions (art 6(2)(d)). As to the contents of such a notice see para 112 note 7 ante. As to appeals against the refusal to give directions see para 135 et seq post.

12 Consumer Credit Act 1974 s 29(6).

UPDATE

110-135 Regulation; Powers and Licensing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

129-134 Renewal, Variation, Suspension and Termination of Licences

As to the winding up of a standard licensee's business see Consumer Credit Act 1974 s 34A (added by Consumer Credit Act 2006 s 32(1)).

See also Consumer Credit Act 1974 ss 33A-33E (added by the Consumer Credit Act 2006) ss 38-42) (further powers of OFT to regulate conduct of licensees). The Consumer Credit Act 1974 s 33A provides the OFT with a new intermediate power (additional to existing powers of revocation, suspension or variation of a licence) to impose requirements on licensees. Section 33B relates to the power of the OFT to impose requirements on supervisory bodies. Supplementary provision relating to requirements is made: s 33C. The procedure the OFT must follow when imposing requirements is set out: s 33D. The OFT must prepare and publish guidance in relation to how it exercises, or how it proposes to exercise, its powers under ss 33A-33C: see s 33E. For transitional provision see Consumer Credit Act 2006 Sch 3 paras 20-22.

See also Consumer Credit Act 1974 ss 39A-39C; and PARA 120.

129 Renewal of licences

TEXT AND NOTES--Consumer Credit Act 1974 s 29 amended and repealed in part: Enterprise Act 2002 Sch 25 para 6(11); Consumer Credit Act 2006 ss 32(2), (3), 34(3), Sch 4.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(2) LICENSING/(iv) Renewal, Variation, Suspension and Termination of Licences/130. Variation of licences on request.

130. Variation of licences on request.

On an application¹ made by the licensee, the Director General of Fair Trading² may, if he thinks fit, vary a standard licence³ in accordance with the application by notice to the licensee⁴.

In the case of a group licence⁵ issued on the application of any person⁶, that person may apply to vary it⁷; and the director may if he thinks fit vary the terms of the licence in accordance with the application by notice to that person⁸. General notice that a variation of a group licence has been made must be given⁹.

A group licence may not be varied by excluding a named person, other than the person making the request, unless that named person consents in writing to his exclusion¹⁰. On an application by a person excluded from a group licence by name or by description, the director may, if he thinks fit, vary the terms of the licence so as to remove the exclusion¹¹.

Where the director is minded to refuse an application, he must by notice¹² (1) inform the applicant that he is so minded, giving his reasons¹³; and (2) invite the applicant to submit representations¹⁴ in support of the application¹⁵. The applicant may appeal against the refusal to vary a licence in accordance with the terms of the application¹⁶.

1 The form of application is Form CC15/96: see General Notice 52. As to applications generally see para 111 ante.

2 As to the Director General of Fair Trading see para 110 ante.

3 For the meaning of 'standard licence' see para 122 ante. For the meaning of 'licence' see para 119 note 3 ante.

4 Consumer Credit Act 1974 s 30(1). For the meaning of 'notice' see para 128 note 3 ante.

5 For the meaning of 'group licence' see para 122 ante.

6 As to the issue of group licences see para 122 ante.

7 An application to vary a group licence must be in writing, signed and dated, and must be accompanied by the following particulars: (1) the name of the group covered by the licence; (2) the name, address and authority of the person seeking the variation; (3) the nature of the variation sought and the reasons for seeking the variation: General Notice 17.

8 See the Consumer Credit Act 1974 s 30(2).

9 Ibid s 30(5). For the meaning of 'general notice' see para 110 note 17 ante.

10 See ibid s 30(2). As to the exclusion of persons from group licences see para 122 note 10 ante.

11 See ibid s 30(3). Variation is effected by notice to the applicant: see s 30(3).

12 ie before determining the application: see ibid s 30(4).

13 Ibid s 30(4)(a).

14 ie in accordance with ibid s 34 (see para 112 ante).

15 Ibid s 30(4)(b).

16 See para 135 et seq post.

UPDATE

110-135 Regulation; Powers and Licensing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

129-134 Renewal, Variation, Suspension and Termination of Licences

As to the winding up of a standard licensee's business see Consumer Credit Act 1974 s 34A (added by Consumer Credit Act 2006 s 32(1)).

See also Consumer Credit Act 1974 ss 33A-33E (added by the Consumer Credit Act 2006) ss 38-42) (further powers of OFT to regulate conduct of licensees). The Consumer Credit Act 1974 s 33A provides the OFT with a new intermediate power (additional to existing powers of revocation, suspension or variation of a licence) to impose requirements on licensees. Section 33B relates to the power of the OFT to impose requirements on supervisory bodies. Supplementary provision relating to requirements is made: s 33C. The procedure the OFT must follow when imposing requirements is set out: s 33D. The OFT must prepare and publish guidance in relation to how it exercises, or how it proposes to exercise, its powers under ss 33A-33C: see s 33E. For transitional provision see Consumer Credit Act 2006 Sch 3 paras 20-22.

See also Consumer Credit Act 1974 ss 39A-39C; and PARA 120.

130 Variation of licences on request

TEXT AND NOTES--Consumer Credit Act 1974 s 30 amended: Enterprise Act 2002 Sch 25 para 6(12).

TEXT AND NOTE 4--Consumer Credit Act 1974 s 30(1) substituted: Consumer Credit Act 2006 s 31(1).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(2) LICENSING/(iv) Renewal, Variation, Suspension and Termination of Licences/131. Compulsory variation of licences.

131. Compulsory variation of licences.

Where, at any time during the currency of a licence¹, the Director General of Fair Trading² is of the opinion that the licence should be varied³ he must (1) in the case of a standard licence⁴ by notice⁵ inform the licensee of the proposed variations, stating his reasons, and invite him to submit representations⁶; (2) in the case of a group licence⁷ give general notice⁸ of the proposed variations, stating his reasons, and in the notice invite any licensee to submit representations to him⁹. In the case of a group licence issued on application¹⁰, the director must also notify the original applicant of the proposed variations, stating his reasons, and invite him to submit representations¹¹. Where he proposes to vary a group licence by excluding any person¹², other than the original applicant, from the group by name, the director must notify that person of his intention, giving reasons, and invite his representations¹³. General notice must be given that a variation of any group licence has been made¹⁴.

A compulsory variation does not take effect before the end of the appeal period¹⁵.

1 For the meaning of 'licence' see para 119 note 3 ante. As to the need for, and types of, licences see paras 121-122 ante. As to the application of the licensing provisions see para 121 ante. As to the application of the licensing provisions to ancillary credit businesses see para 276 post. As to ancillary credit businesses see para 271 et seq post. For the meaning of 'business' see para 81 note 7 ante.

2 As to the Director General of Fair Trading see para 110 ante.

3 The director must be of the opinion that, if the licence had expired at that time, he would, on an application for its renewal or further renewal on the same terms (except as to expiry), have been minded to grant the application but on different terms, and that therefore the licence should be varied: Consumer Credit Act 1974 s 31(1).

4 For the meaning of 'standard licence' see para 122 ante.

5 For the meaning of 'notice' see para 128 note 3 ante.

6 Ie in accordance with the Consumer Credit Act 1974 s 34 (see para 112 ante): see s 31(2).

7 For the meaning of 'group licence' see para 122 ante.

8 For the meaning of 'general notice' see para 110 note 17.

9 Ie in accordance with the Consumer Credit Act 1974 s 34 (see para 112 ante): see s 31(3).

10 As to the issue of group licences see para 122 ante.

11 Ie in accordance with the Consumer Credit Act 1974 s 34 (see para 112 ante): see s 31(4).

12 As to the exclusion of persons from group licences see para 122 note 10 ante.

13 See the Consumer Credit Act 1974 ss 28, 31(5). See also para 128 ante.

14 Ibid s 31(6). See also para 130 text and note 9 ante.

15 Ibid s 31(7). For the meaning of 'appeal period' see para 121 note 2 ante. In the case of compulsory variation of a standard licence, the licensee has the right to appeal; and in the case of compulsory variation of a group licence, the original applicant or any licensee under it may appeal: see para 135 et seq post.

UPDATE

110-135 Regulation; Powers and Licensing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

129-134 Renewal, Variation, Suspension and Termination of Licences

As to the winding up of a standard licensee's business see Consumer Credit Act 1974 s 34A (added by Consumer Credit Act 2006 s 32(1)).

See also Consumer Credit Act 1974 ss 33A-33E (added by the Consumer Credit Act 2006) ss 38-42) (further powers of OFT to regulate conduct of licensees). The Consumer Credit Act 1974 s 33A provides the OFT with a new intermediate power (additional to existing powers of revocation, suspension or variation of a licence) to impose requirements on licensees. Section 33B relates to the power of the OFT to impose requirements on supervisory bodies. Supplementary provision relating to requirements is made: s 33C. The procedure the OFT must follow when imposing requirements is set out: s 33D. The OFT must prepare and publish guidance in relation to how it exercises, or how it proposes to exercise, its powers under ss 33A-33C: see s 33E. For transitional provision see Consumer Credit Act 2006 Sch 3 paras 20-22.

See also Consumer Credit Act 1974 ss 39A-39C; and PARA 120.

131 Compulsory variation of licences

TEXT AND NOTES--Consumer Credit Act 1974 s 31 amended: Enterprise Act 2002 Sch 25 para 6(13); Consumer Credit Act 2006 ss 31(2)-(4), 32(4), 34(4), (5).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(2) LICENSING/(iv) Renewal, Variation, Suspension and Termination of Licences/132. Suspension and revocation of licences.

132. Suspension and revocation of licences.

Where, at any time during the currency of a licence¹, the Director General of Fair Trading² is of the opinion that the licence should be revoked or suspended³ he must (1) in the case of a standard licence⁴, by notice⁵ inform the licensee of his intention⁶, giving his reasons, and invite him to submit representations⁷; (2) in the case of a group licence⁸, give general notice⁹ of his intention¹⁰, stating his reasons, and in the notice invite any licensee to submit representations to him¹¹. In the case of a group licence issued on application¹², he must also inform the original applicant of his intention¹³, and invite his representations¹⁴. General notice must be given of the revocation or suspension of a group licence¹⁵.

A revocation or suspension under these provisions does not take effect before the end of the appeal period¹⁶.

Where he revokes or suspends a licence, the director may give directions authorising the licensee to carry into effect agreements made by him before the revocation or suspension¹⁷.

The effect of the suspension of a licence is that the licensee under it is treated, in respect of the period of suspension, as if the licence had not been issued¹⁸. Where the suspension is not expressed to end on a specified date it may, if the director thinks fit, be ended by notice given by him to the licensee or, in the case of a group licence, by general notice¹⁹.

1 For the meaning of 'licence' see para 119 note 3 ante. As to the need for, and types of, licences see paras 121-122 ante. As to the application of the licensing provisions see para 121 ante. As to the application of the licensing provisions to ancillary credit businesses see para 276 post. As to ancillary credit businesses see para 271 et seq post. For the meaning of 'business' see para 81 note 7 ante.

2 As to the Director General of Fair Trading see para 110 ante.

3 The director must be of the opinion that if the licence had expired at that time he would have been minded not to renew it, and that therefore it should be revoked or suspended: see the Consumer Credit Act 1974 s 32(1).

4 For the meaning of 'standard licence' see para 122 ante.

5 As to the meaning of 'notice' see para 128 note 3 ante.

6 Ie that he is minded, as the case may be, to revoke the licence or to suspend it until a specified date or indefinitely: see the Consumer Credit Act 1974 s 32(2).

7 Ie in accordance with ibid s 34 (see para 112 ante): see s 32(2).

8 For the meaning of 'group licence' see para 122 ante.

9 For the meaning of 'general notice' see para 110 note 17 ante.

10 Ie that he is minded, as the case may be, to revoke the licence or to suspend it until a specified date or indefinitely: see the Consumer Credit Act 1974 s 32(3).

11 Ie in accordance with ibid s 34 (see para 112 ante): see s 32(3).

12 As to the issue of group licences see para 122 ante.

13 Ie that he is minded, as the case may be, to revoke the licence or to suspend it until a specified date or indefinitely: see the Consumer Credit Act 1974 s 32(4).

14 le in accordance with ibid s 34 (see para 112 ante): see s 32(4).

15 Ibid s 32(6).

16 Ibid s 32(7). For the meaning of 'appeal period' see para 121 note 2 ante. In the case of suspension or revocation of a standard licence, the licensee has the right to appeal; and in the case of suspension or revocation of a group licence, the original applicant or any licensee under it may appeal: see para 135 et seq post.

17 Ibid s 32(5). The director must determine whether or not to give such directions not later than the time when he gives notice of his determination to suspend or revoke the licence (see para 112 ante): Consumer Credit Licensing (Representations) Order 1976, SI 1976/191, art 5. Notice of any determination to refuse directions must be given at the same time as the notice in respect of the determination to suspend or revoke the licence: see art 6(2); and para 112 ante. In the case of a standard licence, notice of the refusal to give directions must be given to the licensee: art 6(2)(a). In the case of a group licence, the notice must be given to the original applicant for the licence, if any (art 6(2)(c)); and the director must give notice to the licensee in respect of whom directions are refused, or give general notice of the refusal to give directions (art 6(2)(d)). As to the contents of such a notice see para 112 note 7 ante. The licensee may appeal against the refusal to give directions: see para 135 et seq post.

18 See the Consumer Credit Act 1974 s 32(8). However, this does not apply for the purposes of the renewal provisions (see s 29; and para 129 ante): see s 32(8).

19 See ibid s 32(8). As to application by the licensee to end the suspension see para 133 post.

UPDATE

110-135 Regulation; Powers and Licensing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

129-134 Renewal, Variation, Suspension and Termination of Licences

As to the winding up of a standard licensee's business see Consumer Credit Act 1974 s 34A (added by Consumer Credit Act 2006 s 32(1)).

See also Consumer Credit Act 1974 ss 33A-33E (added by the Consumer Credit Act 2006) ss 38-42 (further powers of OFT to regulate conduct of licensees). The Consumer Credit Act 1974 s 33A provides the OFT with a new intermediate power (additional to existing powers of revocation, suspension or variation of a licence) to impose requirements on licensees. Section 33B relates to the power of the OFT to impose requirements on supervisory bodies. Supplementary provision relating to requirements is made: s 33C. The procedure the OFT must follow when imposing requirements is set out: s 33D. The OFT must prepare and publish guidance in relation to how it exercises, or how it proposes to exercise, its powers under ss 33A-33C: see s 33E. For transitional provision see Consumer Credit Act 2006 Sch 3 paras 20-22.

See also Consumer Credit Act 1974 ss 39A-39C; and PARA 120.

132 Suspension and revocation of licences

TEXT AND NOTES--Consumer Credit Act 1974 s 32 amended and repealed in part:
Enterprise Act 2002 Sch 25 para 6(14); Consumer Credit Act 2006 ss 31(5), 32(5), (6),
34(6), Sch 4.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(2) LICENSING/(iv) Renewal, Variation, Suspension and Termination of Licences/133. Application to end suspension.

133. Application to end suspension.

On an application¹ made by a licensee², the Director General of Fair Trading³ may, if he thinks fit, by notice⁴ to the licensee end the suspension of a licence⁵, whether the suspension was for a fixed or an indefinite period⁶. Unless he determines to end the suspension in accordance with the application, the director must inform the applicant by notice⁷ that he is minded to refuse the application, giving his reasons, and invite the applicant to submit representations to him⁸. The applicant may appeal against a refusal to end the suspension of a licence in accordance with the terms of the application⁹.

General notice must be given that the suspension of a group licence is ended under these provisions¹⁰. Where a group licence was issued on application, the director must also inform the original applicant that a suspension has been ended¹¹.

1 The form of application to end the suspension of a standard licence is Form CC 16/75: General Notice 7. An application to end the suspension of a group licence must be in writing, signed and dated, and must be accompanied by the following particulars: (1) the name of the group covered by the licence; (2) the name, address and authority of the person seeking an end to the suspension; and (3) the reasons for seeking an end to the suspension: General Notice 18. As to applications generally see para 111 ante. For the meaning of 'standard licence' and 'group licence' see para 122 ante. For the meaning of 'licence' see para 119 note 3 ante.

2 For these purposes, where a group licence was issued on application, 'licensee' includes the original applicant: Consumer Credit Act 1974 s 33(4)(a). As to the meaning of 'licensee' generally see para 122 note 10 ante. As to the issue of group licences see para 122 ante.

3 As to the Director General of Fair Trading see para 110 ante.

4 For the meaning of 'notice' see para 128 note 3 ante.

5 For the meaning of 'licence' see para 119 note 3 ante. As to the need for, and types of, licences see paras 121-122 ante. As to the application of the licensing provisions see para 121 ante. As to the application of the licensing provisions to ancillary credit businesses see para 276 post. As to ancillary credit businesses see para 271 et seq post. For the meaning of 'business' see para 81 note 7 ante. As to the suspension of licences see para 132 ante.

6 Consumer Credit Act 1974 s 33(1).

7 Ie before determining the application: see ibid s 33(2).

8 Ie in accordance with ibid s 34 (see para 112 ante): s 33(2).

9 See para 135 et seq post.

10 Consumer Credit Act 1974 s 33(3). For the meaning of 'general notice' see para 110 note 17 ante.

11 Ibid s 33(4)(b).

UPDATE

110-135 Regulation; Powers and Licensing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements

mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

129-134 Renewal, Variation, Suspension and Termination of Licences

As to the winding up of a standard licensee's business see Consumer Credit Act 1974 s 34A (added by Consumer Credit Act 2006 s 32(1)).

See also Consumer Credit Act 1974 ss 33A-33E (added by the Consumer Credit Act 2006) ss 38-42) (further powers of OFT to regulate conduct of licensees). The Consumer Credit Act 1974 s 33A provides the OFT with a new intermediate power (additional to existing powers of revocation, suspension or variation of a licence) to impose requirements on licensees. Section 33B relates to the power of the OFT to impose requirements on supervisory bodies. Supplementary provision relating to requirements is made: s 33C. The procedure the OFT must follow when imposing requirements is set out: s 33D. The OFT must prepare and publish guidance in relation to how it exercises, or how it proposes to exercise, its powers under ss 33A-33C: see s 33E. For transitional provision see Consumer Credit Act 2006 Sch 3 paras 20-22.

See also Consumer Credit Act 1974 ss 39A-39C; and PARA 120.

133 Application to end suspension

TEXT AND NOTES--Consumer Credit Act 1974 s 33 amended: Enterprise Act 2002 Sch 25 para 6(15).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(2) LICENSING/(iv) Renewal, Variation, Suspension and Termination of Licences/134. Termination of licences.

134. Termination of licences.

A licence¹ held by one individual² terminates if he dies, is adjudged bankrupt, or becomes a patient within the meaning of the mental health legislation³.

Regulations⁴ may specify⁵ other events relating to the licensee⁶ on the occurrence of which the licence is to terminate⁷. Thus a licence will also terminate (1) on the approval by the court of a composition or scheme of arrangement⁸ proposed by the licensee, being a composition or arrangement under or in pursuance of which the property of the licensee comprising the business carried on by him under the licence is assigned to a trustee⁹; (2) on the registration¹⁰ of a deed of arrangement executed by the licensee, being a deed under or in pursuance of which the property of the licensee comprising the business carried on by him under the licence is assigned to a trustee¹¹; (3) in a case where all the members of a licensee which is a partnership or other unincorporated body of persons are adjudged bankrupt, on the last such adjudication¹²; (4) on the approval by the court of a composition or scheme of arrangement¹³ proposed by all the members of a licensee which is a partnership or other unincorporated body of persons, being a composition or arrangement under or in pursuance of which the property of the licensee comprising the business carried on by him under the licence is assigned to a trustee¹⁴; (5) on the registration¹⁵ of a deed of arrangement executed by all the members of a licensee which is a partnership or other unincorporated body of persons, being a deed under or in pursuance of which the property of the licensee comprising the business carried on by him under the licence is assigned to a trustee¹⁶; (6) on the relinquishment of the licence by the licensee by notice in writing served on the director¹⁷ and signed by or on behalf of the licensee¹⁸.

Regulations may provide for the termination of a licence to be deferred for a period not exceeding 12 months¹⁹, and authorise the business of the licensee to be carried on under the licence by some other person²⁰ during the period of deferment subject to such conditions as may be prescribed²¹.

1 For the meaning of 'licence' see para 119 note 3 ante. As to the need for, and types of, licences see paras 121-122 ante. As to the application of the licensing provisions see para 121 ante. As to the application of the licensing provisions to ancillary credit businesses see para 276 post. As to ancillary credit businesses see para 271 et seq post. For the meaning of 'business' see para 81 note 7 ante. The Consumer Credit Act 1974 s 37 does not apply to group licences: s 37(4). For the meaning of 'group licence' see para 122 ante.

2 'Individual' is defined in ibid s 189(1) as including a partnership, but it seems that in s 37 'one individual' is used in contradistinction to a partnership or association. For the meaning of 'individual' generally see para 80 note 1 ante.

3 Ie the Mental Health Act 1959 Pt VIII (ss 100-121) (repealed: see now the Mental Health Act 1983 Pt VII (ss 93-113) (as amended); and MENTAL HEALTH vol 30(2) (Reissue) para 671 et seq): Consumer Credit Act 1974 s 37(1). As to bankruptcy generally see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

As to the application of s 37 to Northern Ireland see s 38.

4 For the meaning of 'regulations' see para 114 note 2 ante. As to the power to make regulations generally see para 114 ante.

5 Ie in relation to a licence held by one individual, or a partnership or other unincorporated body of persons, or a body corporate: see the Consumer Credit Act 1974 s 37(2).

6 As to the meaning of 'licensee' see para 122 note 10 ante.

7 Consumer Credit Act 1974 s 37(2). As to the regulations made see the Consumer Credit (Termination of Licences) Regulations 1976, SI 1976/1002 (amended by SI 1981/614).

8 As to compositions and schemes of arrangement see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

9 Consumer Credit (Termination of Licences) Regulations 1976, SI 1976/1002, reg 2, Schedule para 4. 'Court' means, in relation to England and Wales, the county court and, in relation to Northern Ireland, the High Court or the county court: Consumer Credit Act 1974 s 189(1).

10 Ie under the Deeds of Arrangement Act 1914. As to deeds of arrangement see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 859 et seq.

11 Consumer Credit (Termination of Licences) Regulations 1976, SI 1976/1002, reg 2, Schedule para 5.

12 Ibid Schedule para 8.

13 See note 8 supra.

14 Consumer Credit (Termination of Licences) Regulations 1976, SI 1976/1002, Schedule para 10.

15 See note 10 supra.

16 Consumer Credit (Termination of Licences) Regulations 1976, SI 1976/1002, Schedule para 11.

17 Where any notice to be served on the director under ibid Schedule para 11A (as added: see note 18 infra) is sent to him by post, the service must be deemed to be effected at the time at which the notice is delivered by post at the proper address of the director: reg 7 (added by SI 1981/614).

18 Consumer Credit (Termination of Licences) Regulations 1976, SI 1976/1002, Schedule para 11A (added by SI 1981/614). The notice (1) must identify the licence and the licensee; (2) must state that he thereby relinquishes the licence; (3) must state that he no longer requires the licence on account of his having ceased to engage in the activities for which that licence was issued, or his having become covered by another licence, as the case may be; and (4) must be accompanied by the document constituting the licence or, where he is not in possession of it, must indicate the reasons why he is not in possession of it: see the Consumer Credit (Termination of Licences) Regulations 1976, SI 1976/1002, Schedule para 11A (as so added).

19 Consumer Credit Act 1974 s 37(3)(a). The termination of a licence must be deferred for a period of 12 months beginning with the date of the terminating event, except where the licensee relinquishes his licence (see head (6) in the text): Consumer Credit (Termination of Licences) Regulations 1976, SI 1976/1002, reg 3 (substituted by SI 1981/614). Where the licence would expire before the end of the period of deferment, the licence period is extended so that it ends with the expiration of the period of deferment: see the Consumer Credit (Termination of Licences) Regulations 1976, SI 1976/1002, reg 4. As to the licence period see para 122 note 5 ante.

20 Where any terminating event or any subsequent event occurs which would be a terminating event in relation to the licence if the licence was not already to terminate by virtue of an earlier terminating event, any person specified in relation to that terminating event or that subsequent event, as the case may be, is authorised to carry on the business of the licensee under the licence during the period of deferment: see ibid reg 5.

The persons so authorised are:

7 (1) on the death of the licensee: (a) any executor, administrator, trustee, receiver, manager, judicial factor or the official assignee of or appointed in relation to the estate of the deceased licensee or that part of it which comprises the business carried on by the licensee under the licence; or (b) in a case where there is for the time being no person falling within (a) supra entitled to carry on the business of the licensee, any person entitled to apply for a grant of letters of administration (Schedule para 1);

8 (2) on the adjudication of the licensee as bankrupt: the trustee in the bankruptcy or the official assignee (Schedule para 2);

9 (3) on the licensee becoming a patient within the meaning of the Mental Health Act 1959 Pt VIII (ss 100-121) (repealed: see note 3 supra): the person authorised under s 102 (repealed) or s 103 (repealed) (see note 3 supra) for the purpose of carrying on the business of the licensee (Consumer Credit (Termination of Licences) Regulations 1976, SI 1976/1002, Schedule para 3);

- 10 (4) on the approval of a composition or scheme of arrangement: the trustee appointed under or in pursuance of the composition or scheme of arrangement (Schedule paras 4, 10);
 - 11 (5) on the registration of a deed of arrangement: the trustee appointed under or in pursuance of the deed of arrangement (Schedule paras 5, 11);
 - 12 (6) on the last adjudication where all the members of a licensee which is a partnership or other unincorporated body of persons are adjudged bankrupt: the trustee in the bankruptcy or the official assignee (Schedule para 8);
 - 13 (7) on the relinquishment of the licence by the licensee: the licensee (Schedule para 11A (as added: see note 18 supra)).
- 21 Consumer Credit Act 1974 s 37(3)(b). A person other than the licensee authorised to carry on the business of the licensee must do so subject to the following conditions (Consumer Credit (Termination of Licences) Regulations 1976, SI 1976/1002, reg 6 (amended by SI 1981/614)):
- 14 (1) that he must, within a period of two months beginning with the date on which he becomes authorised to carry on the business of the licensee, give notice in writing to the Director General of Fair Trading of (a) his name and the address from which he is or will be carrying on the business of the licensee; (b) the name and address of the licensee as specified in the licence; (c) the terminating event by virtue of which he is or will be carrying on the business of the licensee and the date of that event; and (d) the capacity in which he is or will be carrying on that business (Consumer Credit (Termination of Licences) Regulations 1976, SI 1976/1002, reg 6(a));
 - 15 (2) that if he fails to comply with head (1) supra, he is not authorised to carry on the business of the licensee after the expiry of the two-month period until such time as he has given notice in writing to the director of all the matters specified in head (1) supra (reg 6(b)).

As to the Director General of Fair Trading see para 110 ante.

UPDATE

110-135 Regulation; Powers and Licensing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

129-134 Renewal, Variation, Suspension and Termination of Licences

As to the winding up of a standard licensee's business see Consumer Credit Act 1974 s 34A (added by Consumer Credit Act 2006 s 32(1)).

See also Consumer Credit Act 1974 ss 33A-33E (added by the Consumer Credit Act 2006) ss 38-42 (further powers of OFT to regulate conduct of licensees). The Consumer Credit Act 1974 s 33A provides the OFT with a new intermediate power (additional to existing powers of revocation, suspension or variation of a licence) to impose requirements on licensees. Section 33B relates to the power of the OFT to impose requirements on supervisory bodies. Supplementary provision relating to requirements is made: s 33C. The procedure the OFT must follow when imposing requirements is set out: s 33D. The OFT must prepare and publish guidance in relation to how it exercises, or how it proposes to exercise, its powers under ss 33A-33C: see s 33E. For transitional provision see Consumer Credit Act 2006 Sch 3 paras 20-22.

See also Consumer Credit Act 1974 ss 39A-39C; and PARA 120.

134 Termination of licences

TEXT AND NOTE 3--1974 Act s 37(1) amended: Mental Capacity Act 2005 Sch 6 para 21.
See also 1974 Act s 37(1A), (1B) (added by Consumer Credit Act 2006 s 34(8)).

NOTE 17--SI 1976/1002 reg 7 amended: SI 2004/3236.

TEXT AND NOTE 19--1974 Act s 37(3)(a) amended: Consumer Credit Act 2006 s 34(9).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(2) LICENSING/(v) Appeals/135. In general.

(v) Appeals

135. In general.

In the case of certain determinations¹ by the Director General of Fair Trading² if a specified person³ is aggrieved by the determination⁴, he may, within the prescribed period and in the prescribed manner⁵, appeal to the Secretary of State⁶.

Subject to the provisions of the Consumer Credit Act 1974 and the Consumer Credit Licensing (Appeals) Regulations 1976⁷, the procedure to be followed in the course of an appeal⁸ except in the course of the hearing of oral representations⁹ is to be such as the Secretary of State directs¹⁰.

1 The applicant may appeal in the following cases: (1) refusal to issue (see para 128 ante), renew (see para 129 ante), or vary (see para 130 ante) a licence; (2) refusal to end the suspension of a licence (see para 133 ante); and (3) refusal to make an order permitting the enforcement of agreements made by an unlicensed trader (see para 125 ante): see the Consumer Credit Act 1974 s 41(1), Table. As to appeals by the applicant against refusal to make an order permitting the enforcement of agreements made with a person carrying on an unlicensed ancillary credit business or regulated agreements made on the introduction of an unlicensed credit-broker see paras 277-278 post. For the meaning of 'licence' see para 119 note 3 ante. For the meaning of 'unlicensed' see para 125 note 3 ante.

The licensee may appeal in the case of (a) compulsory variation (see para 131 ante), or suspension or revocation (see para 132 ante), of a standard licence; and (b) refusal to give directions permitting the enforcement of agreements (see paras 129, 132 ante): see s 41(1), Table.

The original applicant or the licensee may appeal in the case of compulsory variation (see para 131 ante), or suspension or revocation (see para 132 ante), of a group licence: see s 41(1), Table.

The person excluded may appeal against his exclusion from a group licence (see paras 122, 128 ante): see s 41(1), Table.

The European investment firm or European institution concerned may appeal against the imposition of a prohibition or restriction or the variation of a restriction and against the refusal of an application for the revocation of a prohibition or restriction: see the Investment Services Regulations 1995, SI 1995/3275, reg 15(6), Sch 5 para 5; Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 18(6), Sch 5 para 5. As to the meaning of 'European investment firm' see para 122 note 6 ante. For the meaning of 'European institution' see para 122 note 6 ante. As to prohibitions and restrictions in relation to European investment firms and European institutions see para 126 ante.

2 As to the Director General of Fair Trading see para 110 ante.

3 Ie a person mentioned in relation to that determination: see note 1 supra.

4 As to the meaning of 'person aggrieved' see JUDICIAL REVIEW vol 61 (2010) PARA 664.

5 For the meaning of 'prescribed' see para 114 note 8 ante. Regulations may make provision as to (1) the persons by whom, on behalf of the Secretary of State, appeals under these provisions are to be heard; (2) the manner in which they are to be conducted; and (3) any other matter connected with such appeals: Consumer Credit Act 1974 s 41(2). As to the regulations made see the Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837; and para 136 et seq post. As from 1 October 1998 these regulations are to be revoked and replaced by the Consumer Credit Licensing (Appeals) Regulations 1998, SI 1998/1203. For the meaning of 'regulations' see para 114 note 2 ante. As to the Secretary of State see para 113 ante.

6 Consumer Credit Act 1974 s 41(1).

7 Ie the Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837. See note 5 supra.

8 For the meaning of 'appeal' see para 136 note 1 post.

9 As to the hearing of oral representations see para 141 post.

10 Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837, reg 26.

At any time the Secretary of State may extend the period, other than the period for giving notice of appeal under reg 2(1) (see para 136 post), within which a person is required or authorised to do anything by the Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837; and those regulations have effect accordingly: reg 25.

Where, by reason of anything done or left undone there has been a failure in any respect to comply with the requirements of the regulations, other than those of reg 2(1) (see para 136 post), the failure does not terminate the appeal unless the Secretary of State so directs; but where there has been such a failure he may give such directions dealing with the proceedings generally as he thinks fit: reg 24.

UPDATE

110-135 Regulation; Powers and Licensing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

135-142 Appeals

Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837 now replaced by Consumer Credit Licensing (Appeals) Regulations 1998, SI 1998/1203 (amended by SI 2003/1400), which make new provision in relation to appeals brought under the Consumer Credit Act 1974 s 41.

See also the Financial Services and Markets Act 2000 s 203(8), Sch 16 para 5.

See further Consumer Credit Act 1974 ss 41ZA, 41ZB (added by SI 2009/1835) (Tribunal Procedure Rules: suspension of OFT determinations; disposal of appeals).

135 In general

TEXT AND NOTES--1976 Regulations replaced by Consumer Credit Licensing (Appeals) Regulations 1998, SI 1998/1203, PARA 135-142.

TEXT AND NOTES 1-6--Consumer Credit Act 1974 s 41(1) amended: Enterprise Act 2002 Sch 25 para 6(21); Consumer Credit Act 2006 s 56(1); SI 2009/1835. For transitional provision see Consumer Credit Act 2006 Sch 3 para 27(1).

NOTE 1--Consumer Credit Act 1974 s 41, Table amended: Consumer Credit Act 2006 ss 33(6), 43(2), 53(2), Sch 4; Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649.

As a consequence of the coming into force of the Financial Services and Markets Act 2000, SI 1992/3218 and SI 1995/3275 are revoked: SI 2001/3649.

TEXT AND NOTES 5-10--1976 Regulations regs 25, 26 not replaced by SI 1998/1203. The Secretary of State may now extend the specific time limits relating to the sending of a notice of appeal or additional material: see regs 3, 5; and PARA 136. Where the time prescribed by the regulations for doing any act expires on a Sunday or public holiday,

the act is in time if done on the next following day which is not a Sunday or public holiday: reg 26.

1976 Regulations reg 24 now SI 1998/1203 reg 25. Any irregularity resulting from failure to comply with any provision of SI 1998/1203 before the Secretary of State has reached his decision does not of itself render the proceedings void: reg 25(1). Where any such irregularity comes to the attention of the Secretary of State, he may, and must if he considers any person may have been prejudiced by the irregularity, give such directions as he thinks just, before reaching his decision, to cure or waive the irregularity: reg 25(2). Clerical mistakes in any document recording a direction, or a decision of the Secretary of State or in an appointed person's report, or errors arising in such a document from an accidental slip or omission, may be corrected by the Secretary of State, but, in the case of a report, only with the permission of the appointed person who prepared it: reg 25(3). 'Document' includes information recorded in writing or in any other form: reg 2. As to the preparation of a report by an appointed person, see PARA 142.

NOTE 5--Consumer Credit Act 1974 s 41(2) repealed: Consumer Credit Act 2006 s 56(3), Sch 4. For transitional provision see Consumer Credit Act 2006 Sch 3 para 27(1).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(2) LICENSING/(v) Appeals/136. Notice of appeal and grounds of appeal.

136. Notice of appeal and grounds of appeal.

The appellant¹ may appeal by giving a notice of appeal² to the Secretary of State within the period for appeal³. In the case of a notice of appeal which is given to the Secretary of State within the period for appeal and appears to him to comply with the requirements⁴, the Secretary of State must inform the appellant of its receipt and send a copy of it to the Director General of Fair Trading⁵.

At or after the time when he gives notice of appeal to the Secretary of State, but not later than the end of the period for appeal, the appellant must give to the Secretary of State notice of the grounds of appeal, known as the 'notice of grounds'⁶. In the case of a notice of grounds which is given to the Secretary of State at a time which satisfies these provisions and appears to him to comply with the requirements⁷, the Secretary of State must inform the appellant of its receipt and send a copy of it to the director⁸.

Within the period of 14 days beginning with the date on which the notice of grounds is given to him, the director must give to the Secretary of State:

- 20 (1) a copy of any document constituting the appellant's application to the director to which the determination by which the appellant is aggrieved relates and of any document containing information in support of that application⁹;
- 21 (2) a copy of any notice of the determination given by the director to the appellant, and any general notice of it given by the director¹⁰; and
- 22 (3) notice setting out any representations which the director wishes to make together with a copy of any document which he wishes to produce, known as 'the director's reply'¹¹.

The Secretary of State must give a copy of the director's reply to the appellant with a notice inviting him to give to the Secretary of State, within a period of 14 days beginning with the date on which the notice is given to him, notice setting out any further representations he wishes to make and a copy of any document he wishes to produce¹². The Secretary of State must give a copy of any notice or other document received¹³ to the director¹⁴.

1 'Appellant' means a person making, or proposing to make, an appeal from a determination, being a person mentioned in the Consumer Credit Act 1974 s 41, Table (see para 135 note 1 ante) in relation to such a determination: Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837, reg 1(2). 'Appeal' means appeal to the Secretary of State under the Consumer Credit Act 1974 s 41 (see para 135 ante), and 'the appeal' must be construed accordingly: Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837, reg 1(2). As to the Secretary of State see para 113 ante. 'Determination' means a determination by the Director General of Fair Trading mentioned in the Consumer Credit Act 1974 s 41, Table (see para 135 note 1 ante): Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837, reg 1(2). As to the Director General of Fair Trading see para 110 ante. As from 1 October the Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837, are revoked and replaced: see para 135 note 5 ante.

2 'Notice of appeal' means a notice given under ibid reg 2(1): reg 1(2). The notice of appeal must (1) identify the appellant and give his business address and his address for service of documents, if different; (2) identify the determination by which the appellant is aggrieved; and (3) be signed by or on behalf of the appellant: see reg 2(1), Sch 1. For the meaning of 'notice' see para 128 note 3 ante (definition applied by reg 1(2)).

3 See ibid reg 2(1). 'Period for appeal' means the period of 28 days beginning with the date on which notice of the determination is given: see regs 1(2), 2(1).

4 As to the requirements see note 2 supra.

5 Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837, reg 2(2). As to the meaning of 'copy' see para 174 text and note 4 post (definition applied by reg 1(2)).

6 Ibid reg 3(1). 'Notice of grounds' means a notice given under reg 3(1): reg 1(2). Every notice of grounds must (1) if it is not given to the Secretary of State together with the notice of appeal to which it relates, identify that notice; (2) contain a concise statement of the grounds of appeal; (3) state the nature of the directions which the appellant wishes the Secretary of State to give under the Consumer Credit Act 1974 s 41(3) (see para 142 post); and (4) be signed by or on behalf of the appellant: Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837, reg 3(1), Sch 2. The statement of the grounds of appeal must (a) indicate any reason and any finding of fact relied on by the director in the notice of the determination which the appellant disputes; (b) give particulars of any reason or fact upon which the appellant relies in relation to the matters disputed under head (a) supra; (c) give particulars of any other reason or fact upon which the appellant relies; and (d) indicate any point on which he relies which appears to him to be a point of law: Sch 2(2).

7 As to the requirements see note 6 supra.

8 Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837, reg 3(2).

9 Ibid reg 4(a).

10 Ibid reg 4(b). 'Notice of the determination', in the case of a determination to which the Consumer Credit Act 1974 s 34 applies (see para 112 ante), means notice thereof given in accordance with the provisions of s 34(3) (see para 112 text and note 7 ante); or, in the case of a determination which is a refusal to give directions in respect of the appellant under s 29(5) or s 32(5) (see paras 129, 132 ante), means a notice setting out the determination given in accordance with the provisions of the Consumer Credit Licensing (Representations) Order 1976, SI 19786/191, art 6 (see para 112 note 7 ante): Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837, reg 1(2). For the meaning of 'general notice' see para 110 note 17 ante (definition applied by reg 1(2)).

11 Ibid reg 4(c). 'The director's reply' means a notice given under reg 4(c) together with any document given with it: see regs 1(2), 4(c).

12 Ibid reg 5(a).

13 Ie received under ibid reg 5(a): see reg 5(b).

14 Ibid reg 5(b).

UPDATE

135-142 Appeals

Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837 now replaced by Consumer Credit Licensing (Appeals) Regulations 1998, SI 1998/1203 (amended by SI 2003/1400), which make new provision in relation to appeals brought under the Consumer Credit Act 1974 s 41.

See also the Financial Services and Markets Act 2000 s 203(8), Sch 16 para 5.

See further Consumer Credit Act 1974 ss 41ZA, 41ZB (added by SI 2009/1835) (Tribunal Procedure Rules: suspension of OFT determinations; disposal of appeals).

136 Notice of appeal [and additional material]

TEXT AND NOTES--Replaced.

An appellant¹ aggrieved by a determination² must, if he wishes to appeal against it, appeal by sending a notice³ of appeal to the Secretary of State⁴ so that it is received not later than the end of the period of 28 days beginning with the date on which notice of the determination⁵ is given⁶. The Secretary of State may extend the time limit, but

must not do so unless he is satisfied that the circumstances are such that it would not be reasonable to expect the appellant to comply with the time limit, and that not to extend the time limit could result in substantial injustice⁷.

The Director General of Fair Trading⁸, on giving notice of a determination, must at the same time send to the person to whom it is addressed a form which may be used for making an appeal, but an appeal need not be made using such a form⁹. The notice of appeal must state the name and address of the appellant and must contain sufficient information to identify the determination by which he is aggrieved¹⁰. It must also (1) set out the grounds of appeal in sufficient detail to indicate the particulars of any matter referred to in the director's determination which the appellant disputes, together with the reasons why he disputes it, and the particulars of any other matter upon which the appellant relies for the purpose of his appeal against the director's determination; and (2) indicate the name and address and the profession or occupation of the person, if any, representing the appellant, and whether the Secretary of State ought to send documents¹¹ concerning the appeal to the representative instead of to the appellant¹². The appellant or his representative must sign the notice of appeal¹³.

Within a period of 21 days beginning with the date on which he receives a copy¹⁴ of the notice of appeal from the Secretary of State the director must send certain material, known as additional material¹⁵, to the Secretary of State¹⁶. The director must send to the Secretary of State (a) a copy of the determination by which the appellant is aggrieved¹⁷; and (b) a copy of every other document on which he intends to rely for the purposes of opposing the appeal, including any document in which he sets out for the first time the particulars of any fact or reason for opposing the appeal, additional to those reasons that are detailed in the determination¹⁸. Where the Secretary of State is satisfied that it would not be reasonable to expect the director to send any document, or documents of any description, within the specified time limit, he may extend the time limit in relation to that document or documents of that description¹⁹.

1 'Appellant' means a person making, or proposing to make, an appeal from a determination, being a person mentioned in the second column of the table set out at the end of the Consumer Credit Act 1974 s 41 in relation to such a determination: Consumer Credit Licensing (Appeals) Regulations 1998, SI 1998/1203, reg 2.

2 'Determination' means a determination by the Director General of Fair Trading mentioned in the first column of the table referred to in NOTE 1: SI 1998/1203 reg 2. As to the 1974 Act s 41, Table, see PARA 135 NOTE 1. As to the Director General of Fair Trading, see PARA 110.

3 For the meaning of 'notice', see PARA 128 NOTE 3 (definition applied by the SI 1998/1203 reg 2).

4 As to the Secretary of State, see PARA 113.

5 'Notice of a determination' means (1) in the case of a determination to which the 1974 Act s 34 applies (see PARA 112), notice given in accordance with s 34(3) (see PARA 112 TEXT AND NOTE 7); or (2) in the case of a determination which is a refusal to give directions in respect of the appellant under s 29(5) or 32(5) (see PARAS 129, 132 respectively), a notice setting out the determination given in accordance with the provisions of the Consumer Credit Licensing (Representations) Order 1976, SI 1976/191, art 6 (see PARA 112 NOTE 7): SI 1998/1203 reg 2.

6 Ibid reg 3(1).

7 Ibid reg 3(2). Where the appellant considers that the period of 28 days is likely to expire, or where it has expired, before he is or was able to give his notice of appeal, he must, if he wishes the Secretary of State to extend the time limit, send to the Secretary of State a statement of the reasons on which he relies to justify the delay in giving notice, and the Secretary of State must consider any such statement in deciding whether or not to extend the time limit: reg 3(3).

8 See NOTE 2.

9 SI 1998/1203 reg 4(1).

- 10 Ibid reg 4(2).
- 11 For the meaning of 'document', see PARA 135 TEXT AND NOTES 5-10.
- 12 SI 1998/1203 reg 4(3).
- 13 Ibid reg 4(4).
- 14 For the meaning of 'copy', see PARA 174 TEXT AND NOTE 4 (definition applied by ibid reg 2).
- 15 le the material required by SI 1998/1203 reg 5(2), (3).
- 16 Ibid reg 5(1).
- 17 Ibid reg 5(2)(a).
- 18 Ibid reg 5(2)(b).
- 19 Ibid reg 5(3).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(2) LICENSING/(v) Appeals/137. Amendment of grounds of appeal.

137. Amendment of grounds of appeal.

Where the appellant¹ has given him a notice² setting out a proposed amendment, and it appears to the Secretary of State that the amendment should be made, the Secretary of State must amend the notice of grounds³. When the Secretary of State makes an amendment of a notice of grounds under this provision he must give to the appellant and to the Director General of Fair Trading notice of that fact, known as 'notice of amendment'⁴, setting out the amendment⁵. Within the period of seven days beginning with the date on which a notice of amendment is given to him, the director must give to the Secretary of State notice setting out any representations he wishes to make thereon together with a copy of any further document which he wishes to produce⁶. The Secretary of State must give a copy of any notice or document⁷ to the appellant with a notice inviting him to give to the Secretary of State, within a period of seven days beginning with the date on which the notice is given to him, notice setting out any further representations he wishes to make and a copy of any further document he wishes to produce⁸. The Secretary of State must give a copy of any notice or other document received⁹ to the director¹⁰.

1 For the meaning of 'appellant' see para 136 note 1 ante.

2 Ie at a time when he is permitted to do so: see the Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837, reg 6(1)(a). An appellant may give notice to the Secretary of State under reg 6(1)(a) at any time before he gives notice to the parties under reg 9(4) that a hearing of oral representations is not necessary (see para 140 post), or directions under reg 10(1) for oral representations to be heard by an appointed person (see para 141 post): reg 6(2). For the meaning of 'notice' see para 128 note 3 ante (definition applied by reg 1(2)). As to the Secretary of State see para 113 ante. 'Party', in relation to an appeal, means any party to the appeal, including the Director General of Fair Trading: reg 1(2). For the meaning of 'appeal' see para 136 note 1 ante. As to the Director General of Fair Trading see para 110 ante. For the meaning of 'appointed person' see para 141 note 2 post. As from 1 October the Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837, are revoked and replaced: see para 135 note 5 ante.

3 Ibid reg 6(1)(a), (b). For the meaning of 'notice of grounds' see para 136 note 6 ante. Where an appellant has given notice to the Secretary of State under reg 6(1)(a) and it does not appear to the Secretary of State that the amendment should be made he must give the appellant notice of that fact, giving his reasons: reg 6(4).

4 'Notice of amendment' means a notice given under ibid reg 6(3): reg 1(2).

5 See ibid reg 6(3).

6 Ibid reg 7(1). As to the meaning of 'copy' see para 174 text and note 4 post (definition applied by reg 1(2)).

7 Ie given under ibid reg 7(1): see reg 7(2).

8 Ibid reg 7(2)(a).

9 Ie received under ibid reg 7(2)(a): see reg 7(2)(b).

10 Ibid reg 7(2)(b).

UPDATE

135-142 Appeals

Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837 now replaced by Consumer Credit Licensing (Appeals) Regulations 1998, SI 1998/1203 (amended by SI

2003/1400), which make new provision in relation to appeals brought under the Consumer Credit Act 1974 s 41.

See also the Financial Services and Markets Act 2000 s 203(8), Sch 16 para 5.

See further Consumer Credit Act 1974 ss 41ZA, 41ZB (added by SI 2009/1835) (Tribunal Procedure Rules: suspension of OFT determinations; disposal of appeals).

137 Amendment of grounds of appeal [and additional material]

TEXT AND NOTES--Replaced.

The appellant¹ may, with the leave of the Secretary of State², at any time before he receives notice of the time and place of the hearing of the appeal³, add to or amend the grounds of appeal and the Director General of Fair Trading⁴ may, with the leave of the Secretary of State, at any time before he receives such notice, add to or amend the additional material⁵. An appellant seeking leave of the Secretary of State to add to or amend his grounds of appeal or the director seeking leave to add to or amend additional material must send a copy⁶ of every amendment and any document⁷ necessary to explain or to support that amendment or addition to the Secretary of State⁸. The Secretary of State must not grant leave unless he is satisfied that the amendment of, or addition to, the grounds or the new or amended additional material is capable of significantly affecting the outcome of the appeal, and he has afforded the appellant or the director, as appropriate, an opportunity to make representations to him in writing on the proposed amendment, or addition, or the new or amended additional material⁹. Where the Secretary of State grants leave, he may do so on such terms as he thinks fit¹⁰.

1 For the meaning of 'appellant', see PARA 136 NOTE 1.

2 As to the Secretary of State, see PARA 113.

3 Le a notice served pursuant to the Consumer Credit Licensing (Appeals) Regulations 1998, SI 1998/1203, reg 12(2) (see PARA 141 TEXT AND NOTE 8). For the meaning of 'notice', see PARA 128 NOTE 3 (definition applied by reg 2).

4 As to the Director General of Fair Trading, see PARA 110.

5 SI 1998/1203 reg 6(1). The reference to grounds of appeal and additional material is, in the former case, to grounds of appeal sent in accordance with reg 4 and, in the latter case, to additional material sent in accordance with reg 5(2)(b) (see PARA 136): reg 6(1).

6 For the meaning of 'copy', see PARA 174 TEXT AND NOTE 4 (definition applied by ibid reg 2).

7 For the meaning of 'document', see PARA 135 TEXT AND NOTES 5-10.

8 SI 1998/1203 reg 6(2).

9 Ibid reg 6(3).

10 Ibid reg 6(4).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(2) LICENSING/(v) Appeals/138. Abandonment of appeal.

138. Abandonment of appeal.

The appellant¹ may at any time by notice² to the Secretary of State³ abandon the appeal⁴. The Secretary of State must send a copy⁵ of any such notice to the Director General of Fair Trading⁶.

- 1 For the meaning of 'appellant' see para 136 note 1 ante.
- 2 For the meaning of 'notice' see para 128 note 3 ante (definition applied by the Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837, reg 1(2)). As from 1 October the Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837, are revoked and replaced: see para 135 note 5 ante.
- 3 As to the Secretary of State see para 113 ante.
- 4 Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837, reg 23(1). For the meaning of 'appeal' see para 136 note 1 ante.
- 5 As to the meaning of 'copy' see para 174 text and note 4 post (definition applied by ibid reg 1(2)).
- 6 Ibid reg 23(2). As to the Director General of Fair Trading see para 110 ante.

UPDATE

135-142 Appeals

Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837 now replaced by Consumer Credit Licensing (Appeals) Regulations 1998, SI 1998/1203 (amended by SI 2003/1400), which make new provision in relation to appeals brought under the Consumer Credit Act 1974 s 41.

See also the Financial Services and Markets Act 2000 s 203(8), Sch 16 para 5.

See further Consumer Credit Act 1974 ss 41ZA, 41ZB (added by SI 2009/1835) (Tribunal Procedure Rules: suspension of OFT determinations; disposal of appeals).

138 [Withdrawal of appeal or opposition to appeal]

TEXT AND NOTES--Replaced.

The appellant¹ may at any time withdraw his appeal by notice² to the Secretary of State³. Where an appeal is withdrawn, a fresh appeal may not be brought in relation to the disputed determination⁴.

Where the Director General of Fair Trading⁵ at any time gives notice to the Secretary of State in writing that he does not seek to oppose an appeal, the Secretary of State may give notice to the director, that he proposes⁶ to give the directions the appellant seeks in relation to the appeal⁷.

- 1 For the meaning of 'appellant', see PARA 136 NOTE 1.
- 2 For the meaning of 'notice', see PARA 128 NOTE 3 (definition applied by the Consumer Credit Licensing (Appeals) Regulations 1998, SI 1998/1203, reg 2).
- 3 Ibid reg 7(1). As to the Secretary of State, see PARA 113.

- 4 Ibid reg 7(2). For the meaning of 'determination', see PARA 136 NOTE 2.
- 5 As to the Director General of Fair Trading, see PARA 110.
- 6 Ie pursuant to the Consumer Credit Act 1974 s 41(3) (see PARA 142 TEXT AND NOTES 1-3).
- 7 SI 1998/1203 reg 8.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(2) LICENSING/(v) Appeals/139. Disclosure of documents.

139. Disclosure of documents.

The Secretary of State¹ at any time, or the appointed person² during the hearing of oral representations³ by him, may invite any party⁴ to supply to him any document or copy⁵ thereof which appears to him to be material to the appeal⁶. Where any document is supplied by a party under this provision to the Secretary of State, he must send a copy of it to any other party⁷; and where any document is supplied by a party under this provision to the appointed person, he must afford to any other party an opportunity to examine it, or must otherwise make known its contents to that party⁸.

In any case where he is required⁹ to make known in any way the contents of any document to any party, the Secretary of State or the appointed person, as the case may be, may so far as that is practicable exclude from any copy of any document or from information about its contents any matter which relates to the private affairs of a person who is not a party and the publication of which would or might in the opinion of the Secretary of State or of the appointed person prejudicially affect the interests of that person¹⁰.

- 1 As to the Secretary of State see para 113 ante.
- 2 For the meaning of 'appointed person' see para 141 note 2 post.
- 3 As to the hearing of oral representations see para 141 post.
- 4 For the meaning of 'party' see para 137 note 2 ante.
- 5 As to the meaning of 'copy' see para 174 text and note 4 post (definition applied by the Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837, reg 1(2)).
- 6 Ibid reg 21(1). For the meaning of 'appeal' see para 136 note 1 ante. As from 1 October the Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837, are revoked and replaced: see para 135 note 5 ante.
- 7 Ibid reg 21(2)(a).
- 8 Ibid reg 21(2)(b).
- 9 Ie under the Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837: see reg 22.
- 10 Ibid reg 22.

UPDATE

135-142 Appeals

Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837 now replaced by Consumer Credit Licensing (Appeals) Regulations 1998, SI 1998/1203 (amended by SI 2003/1400), which make new provision in relation to appeals brought under the Consumer Credit Act 1974 s 41.

See also the Financial Services and Markets Act 2000 s 203(8), Sch 16 para 5.

See further Consumer Credit Act 1974 ss 41ZA, 41ZB (added by SI 2009/1835) (Tribunal Procedure Rules: suspension of OFT determinations; disposal of appeals).

139 [The Secretary of State's response to the appeal]

TEXT AND NOTES--Replaced.

On receiving the notice of appeal and the additional material¹ the Secretary of State² must in each case without delay send an acknowledgement of its receipt to the appellant³ or the Director General of Fair Trading⁴, as appropriate, and send a copy⁵ of it to the appellant or the director, as appropriate⁶.

Where notice of an appeal or additional material has been received by the Secretary of State and he considers that the appeal could be decided more fairly and efficiently if the appellant provided clarification of his grounds or if the director provided further additional material, the Secretary of State may serve on the appellant or the director, as appropriate, a notice to that effect, inviting the relevant party⁷ to provide that clarification or to supply that material to the Secretary of State within 21 days of the date of the notice⁸.

Where the Secretary of State serves such a notice on either the appellant or the director, he must at the same time inform the other party to the appeal that he has done so and must without delay send to the appellant or the director, as appropriate, a copy of any document⁹ he receives¹⁰.

1 As to the notice of appeal and the additional material, see PARA 136. For the meaning of 'notice', see PARA 128 NOTE 3 (definition applied by the Consumer Credit Licensing (Appeals) Regulations 1998, SI 1998/1203, reg 2).

2 As to the Secretary of State, see PARA 113.

3 For the meaning of 'appellant', see PARA 136 NOTE 1.

4 As to the Director General of Fair Trading, see PARA 110.

5 For the meaning of 'copy', see PARA 174 TEXT AND NOTE 4 (definition applied by SI 1998/1203 reg 2).

6 Ibid reg 9.

7 'Party', in relation to an appeal, means any party to the appeal, including the director: *ibid* reg 2.

8 *Ibid* reg 10(1).

9 For the meaning of 'document', see PARA 135 TEXT AND NOTES 5-10.

10 SI 1998/1203 reg 10(2).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(2) LICENSING/(v) Appeals/140. Disposal of appeal without oral representations.

140. Disposal of appeal without oral representations.

After taking into account any notice and any document received¹ the Secretary of State² may at any time give notice to the Director General of Fair Trading³ that he proposes⁴ to give the directions which the appellant⁵ seeks unless the director objects by notice given to the Secretary of State within a period of 14 days beginning with the date on which that notice is given⁶.

If the director does not so object or informs the Secretary of State that he will not so object within that period, the Secretary of State must give those directions⁷.

If the director does so object within that period, the Secretary of State must give notice to the appellant that he will give directions for oral representations to be heard unless, within a period of 14 days beginning with the date on which that notice is given, the appellant gives notice to him that the appellant prefers the appeal to be heard without oral representations⁸.

Where the appellant has given such notice the Secretary of State may give notice to any party⁹ specifying any question which appears to him to be material and inviting that party to give to him, within a period of seven days beginning with the date on which that notice is given, notice setting out any representations which he wishes to make thereon¹⁰. Where a notice setting out representations is so given, the Secretary of State must send a copy¹¹ of it to the other party and by notice invite that party to give to him, within a period of seven days beginning with the date on which that notice is given, notice setting out any representations he wishes to make thereon¹².

Where the appellant has given notice that he prefers the appeal to be heard without oral representations, and it appears to the Secretary of State that it is not necessary for oral representations to be heard, the Secretary of State must give notice to the director informing him of that fact and inviting him, within a period of seven days beginning with the date on which that notice is given, to give to the Secretary of State notice setting out any representations he wishes to make about the necessity of oral representations being heard¹³.

Where the appellant has given notice that he prefers the appeal to be heard without oral representations, and it appears to the Secretary of State after taking account of any notice given to him under these provisions¹⁴ that it is not necessary for oral representations to be heard, the Secretary of State must give notice to the parties that a hearing of oral representations is not necessary¹⁵ and that the Secretary of State is proceeding to refer the appeal to an appointed person¹⁶ for consideration and report¹⁷ without a hearing of oral representations¹⁸ or to give directions for disposing of the appeal¹⁹. The Secretary of State must so refer the appeal or give those directions²⁰.

1 He received under the Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837, reg 2, 3, 4, 5, 6, 7, or 21; see reg 8(1). For the meaning of 'notice' see para 128 note 3 ante (definition applied by reg 1(2)). As from 1 October the Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837, are revoked and replaced: see para 135 note 5 ante.

2 As to the Secretary of State see para 113 ante.

3 As to the Director General of Fair Trading see para 110 ante.

4 He under the Consumer Credit Act 1974 s 41(3) (see para 142 post): see the Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837, reg 8(1).

- 5 For the meaning of 'appellant' see para 136 note 1 ante.
- 6 Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837, reg 8(1).
- 7 Ibid reg 8(2)(a).
- 8 See ibid regs 8(2)(b), 9(1).
- 9 For the meaning of 'party' see para 137 note 2 ante.
- 10 Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837, reg 9(2)(a), (b).
- 11 As to the meaning of 'copy' see para 174 text and note 4 post (definition applied by ibid reg 1(2)).
- 12 Ibid reg 9(2)(i), (ii).
- 13 Ibid reg 9(3).
- 14 Ie ibid reg 9: see reg 9(4).
- 15 Ibid reg 9(4)(a).
- 16 For the meaning of 'appointed person' see para 141 note 2 post.
- 17 As to the report see para 141 post.
- 18 Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837, reg 9(4)(b)(i).
- 19 Ie under the Consumer Credit Act 1974 s 41(3): Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837, reg 9(4)(b)(ii).
- 20 Ibid reg 9(4).

UPDATE

135-142 Appeals

Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837 now replaced by Consumer Credit Licensing (Appeals) Regulations 1998, SI 1998/1203 (amended by SI 2003/1400), which make new provision in relation to appeals brought under the Consumer Credit Act 1974 s 41.

See also the Financial Services and Markets Act 2000 s 203(8), Sch 16 para 5.

See further Consumer Credit Act 1974 ss 41ZA, 41ZB (added by SI 2009/1835) (Tribunal Procedure Rules: suspension of OFT determinations; disposal of appeals).

140 Disposal of appeal without oral representations

TEXT AND NOTES--Omitted. Unlike the 1976 Regulations, there is no provision in the Consumer Credit Licensing (Appeals) Regulations 1998, SI 1998/1203, for appeals to be determined merely by written representations, rather than by means of an oral hearing.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(2) LICENSING/(v) Appeals/141. Hearing of oral representations.

141. Hearing of oral representations.

Where the Secretary of State¹ so directs, oral representations must be heard by an appointed person² or by an officer of the Secretary of State³; and the Secretary of State must give notice of any such direction to the parties⁴.

An appellant⁵ may amend a notice of grounds⁶ in the course of the hearing of oral representations if the appointed person gives leave for the amendment which is proposed to be made⁷.

After taking into account any notice, statement and other document which has been sent to the Secretary of State⁸ and not less than 21 days before the date on which oral representations are to be heard, the Secretary of State must⁹ give notice to the parties of the date, time and place of the hearing¹⁰.

A member of the Council on Tribunals must be permitted to attend the hearing of oral representations in his capacity as such a member¹¹.

The appointed person must give such directions at the hearing of oral representations as appear to him to be appropriate for its proper conduct¹², and must (1) permit any person, known as the 'representative', who is authorised by any party to do so to conduct that party's case on his behalf¹³; (2) afford to the parties or their representatives an opportunity to make an opening and a closing statement¹⁴; (3) if he adjourns the hearing, inform the parties a reasonable time before its resumption of the date, time and place of that resumption¹⁵; (4) permit each party or his representative to call witnesses¹⁶; (5) address any questions which appear to him to be appropriate to each party and to any witness¹⁷; and (6) permit any questions which appear to him to be appropriate to be addressed by each party or his representative to any party who is present and to any witness¹⁸.

Where the appellant or his representative does not appear at the date, time and place of the hearing the appointed person may (a) adjourn the hearing¹⁹; or (b) if there appears to him to be good reason to do so, proceed to hear the Director General of Fair Trading or his representative, if he appears, or proceed forthwith to prepare his report²⁰.

Where the appeal is referred to the appointed person for consideration and report without a hearing of oral representations²¹ or the appointed person has completed the hearing of oral representations, he must take into account any representations made and evidence²² produced in the course of the appeal and give to the Secretary of State a reasoned report in writing thereon²³.

Where it appears from the report of the appointed person that, after the appellant's failure to appear at the hearing, the appointed person has proceeded to hear the director or his representative or to prepare his report²⁴ the Secretary of State may give directions dismissing the appeal²⁵. Where it so appears from that report and the Secretary of State is minded to give directions dismissing the appeal²⁶, the Secretary of State must²⁷, not less than seven days before he gives those directions, give notice to the appellant of the fact that he is so minded²⁸. In such a notice the Secretary of State must inform the appellant that he will give directions dismissing the appeal unless the appellant satisfies him within a period of seven days beginning with the date on which the notice is given that there was sufficient reason for the failure to appear²⁹. Where the appellant so satisfies him, the Secretary of State must give such directions as appear to him to be appropriate for a further hearing of oral representations, and these provisions apply accordingly³⁰.

1 As to the Secretary of State see para 113 ante.

2 Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837, reg 10(1)(a). 'Appointed person' means a person appointed by the Secretary of State in relation to an appeal in accordance with the provisions of reg 19: reg 1(2). For the meaning of 'appeal' see para 136 note 1 ante. Regulation 19 provides that the Secretary of State may appoint to hear an appeal on his behalf any person who appears to him by reason of his knowledge or experience to be qualified to do so; and where he appoints more than one such person in relation to an appeal he may determine which of them is to preside: see reg 19(1). The Secretary of State may appoint any person to give the appointed person advice on matters of law or on any other matter relating to the appeal: reg 19(2).

Where the Secretary of State directs that oral representations are to be heard by an officer of his, references in regs 6(2), 11, 14, 15, 16, 17, 19, 21, and 22 (as to reg 6(2) see para 137 ante; and as to regs 21, 22 see para 139 ante) to the appointed person must be construed as references to that officer: reg 10(3).

As from 1 October the Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837, are revoked and replaced: see para 135 note 5 ante.

3 Ibid reg 10(1)(b). A direction must not be given under reg 10(1)(b) unless the Secretary of State has afforded the parties an opportunity of making representations to him thereon: reg 10(2). For the meaning of 'party' see para 137 note 2 ante.

4 Ibid reg 10(1). For the meaning of 'notice' see para 128 note 3 ante (definition applied by reg 1(2)).

5 For the meaning of 'appellant' see para 136 note 1 ante.

6 For the meaning of 'notice of grounds' see para 136 note 6 ante.

7 Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837, reg 11(1). The appointed person must not give such leave unless he has informed the Director General of Fair Trading that he is minded to do so and afforded to him an opportunity of making representations on the proposed amendment: reg 11(2). As to the Director General of Fair Trading see para 110 ante.

8 Ie under the Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837: see reg 12.

9 Ie in any case other than a case where the appeal is disposed of under ibid reg 8(2)(a) (see para 140 text and note 7 ante) or reg 9(4)(b)(ii) (see para 140 text and note 19 ante) or is referred to an appointed person for consideration and report without a hearing of oral representations under reg 9(4)(b)(i) (see para 140 text and note 18 ante): see reg 12.

10 Ibid reg 12.

11 Ibid reg 13. As to the Council on Tribunals see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) para 56 et seq.

12 Ibid reg 14(1).

13 Ibid reg 14(2)(a).

14 Ibid reg 14(2)(b).

15 Ibid reg 14(2)(c).

16 Ibid reg 14(2)(d).

17 Ibid reg 14(2)(e).

18 Ibid reg 14(2)(f).

19 Ibid reg 15(a).

20 Ibid reg 15(b).

21 Ie under ibid reg 9(4)(b)(i) (see para 140 text and note 18 ante): see reg 16(1).

22 Evidence may be admitted in an appeal whether or not it would be admissible in a court of law: see ibid reg 20.

- 23 Ibid reg 16(1). Where the appointed person has proceeded under reg 15(b) (see the text and note 20 supra) he must expressly state that he has done so in his report: reg 16(2).
- 24 Ie under ibid reg 15(b) (see text and note 20 supra): see reg 17(1).
- 25 Ibid reg 17(1).
- 26 Ie whether or not by virtue of ibid reg 17(1): see reg 17(2).
- 27 Ie unless it appears that an appointed person has proceeded under ibid reg 15(b) (see the text and note 20 supra) on more than one occasion: see reg 17(2).
- 28 Ibid reg 17(2).
- 29 Ibid reg 17(3).
- 30 Ibid reg 17(3).

UPDATE

135-142 Appeals

Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837 now replaced by Consumer Credit Licensing (Appeals) Regulations 1998, SI 1998/1203 (amended by SI 2003/1400), which make new provision in relation to appeals brought under the Consumer Credit Act 1974 s 41.

See also the Financial Services and Markets Act 2000 s 203(8), Sch 16 para 5.

See further Consumer Credit Act 1974 ss 41ZA, 41ZB (added by SI 2009/1835) (Tribunal Procedure Rules: suspension of OFT determinations; disposal of appeals).

141 Hearing of oral representations

TEXT AND NOTES--Replaced.

On receiving notice of appeal¹ the Secretary of State² must without delay appoint one or more panel members³ to hear the appeal and, where he appoints more than one, he must determine who will preside⁴. He must also, on receiving such notice and the additional material⁵, bearing in mind the seriousness and complexity of the case and the convenience of the parties⁶, without delay fix a date and place for the hearing⁷. He must serve on the parties a notice informing them of the time and place of the hearing of the appeal⁸. The date fixed for the hearing must be no less than 21 days and no more than six weeks after the date of such a notice⁹. The notice must include guidance regarding the procedure which will apply to the hearing, including, in particular, information about (1) attending the hearing and bringing documents¹⁰ and evidence; (2) the right of the parties to call witnesses; (3) the right to be represented or assisted at the hearing; (4) the right to receive the report of the appointed person; (5) the right to receive in writing the Secretary of State's reasons for the directions given by him for the disposal of the appeal¹¹; (6) the right to appeal from the Secretary of State's directions; and (7) the public nature of the hearing¹².

The Secretary of State may, if he thinks that any technical or other matter, including a matter of law, arises in relation to the appeal on which it would be desirable for the appointed person to have the assistance of any person having specialist knowledge in relation to that matter, appoint a person having appropriate qualifications to inquire into and report on the matter and, if either party or the appointed person requests, to attend the hearing and give evidence¹³.

No less than 14 days before the date fixed for the hearing, the appellant and the Director General of Fair Trading¹⁴ must each inform the Secretary of State whether or not he intends to attend the hearing, whom he intends to be represented by, if anyone, and which, if any, witnesses he or his representative intends to call and whether, and on what grounds, he requests that the hearing ought not to be held in public¹⁵.

The hearing must be in public except where the Secretary of State is satisfied that, either because the subject matter to be considered by the appointed person relates to intimate personal or financial circumstances, is commercially sensitive, or consists of information communicated or obtained in confidence, or for any other reason, it is fair and reasonable for the hearing, or any part of the hearing, to be conducted in private¹⁶. The Secretary of State must, in such manner as he thinks fit, publish a notice of the time and place fixed for any hearing to which the public are to have access¹⁷.

At the beginning of the hearing the appointed person or, if more than one has been appointed, the appointed person who is to preside (a) must explain the order of proceedings which he proposes to adopt; (b) must conduct the hearing in the manner which he considers most suitable to the clarification and resolution of the issues in dispute before him and to the fair handling of the proceedings; and (c) must, so far as appears appropriate, seek to avoid formality in the proceedings¹⁸. The appellant and the director may appear at the hearing and may be represented or assisted by any person¹⁹. If the appellant or the director fails to attend or be represented at the hearing, the appointed person may hear the other party or his representative and proceed to prepare his report²⁰. Subject to conditions²¹, the appellant and the director are entitled to give evidence, to call witnesses, to question any witnesses and to address the appointed person both on the evidence and generally on the subject matter of the appeal²².

Evidence before the appointed person may be given orally or, if he permits, by affidavit or written statement²³. The appointed person may receive evidence of any fact which appears to him to be relevant, whether or not the evidence would be admissible in a court of law or was available to the director when the determination²⁴ was made²⁵.

1 Le pursuant to the Consumer Credit Licensing (Appeals) Regulations 1998, SI 1998/1203, reg 3 (see PARA 136). For the meaning of 'notice', see PARA 128 NOTE 3 (definition applied by reg 2).

2 As to the Secretary of State, see PARA 113.

3 There are separate panels for England and Wales, for Scotland and for Northern Ireland, all appointed by the Secretary of State to hear appeals on his behalf: SI 1998/1203 reg 24(1). Appointments to the panels must be made from (1) persons who satisfy specified legal qualifications; (2) persons whom the Secretary of State considers, by reason of their experience or otherwise, to have special knowledge of matters likely to be relevant to appeals under the Consumer Credit Act 1974; or (3) persons whom the Secretary of State considers representative of the interests of persons in relation to whom the Director General of Fair Trading has power to make the determinations referred to in s 41 (see PARA 135 NOTE 1): SI 1998/1203 reg 24(2). As to the Director General of Fair Trading, see PARA 110. A person appointed to a panel must be appointed, or re-appointed, for a period not exceeding five years, but may be removed from office by the Secretary of State on the grounds of incapacity or misbehaviour, and subject to that will hold and vacate office in accordance with the terms of his appointment: reg 24(3). The location of the appellant's business premises (or in the case of an appellant without a licence, his proposed business premises) determines the panel from which a person is appointed to hear an appeal: reg 24(5). 'Business premises' means premises for occupation for the purposes of a consumer credit, consumer hire or ancillary credit business or for any of those and other purposes: reg 2. The Secretary of State may determine the fees and expenses to be paid to the appointed person: reg 24(6).

4 Ibid reg 24(4). Where more than one person has been appointed to hear an appeal, the persons appointed may, in the event of the absence of any other appointed persons, if they think fit, hear, or continue to hear, the appeal: reg 19.

5 As to the additional material, see PARA 136.

6 For the meaning of 'party', see PARA 139 NOTE 7.

7 SI 1998/1203 reg 12(1).

8 Ibid reg 12(2).

9 Ibid reg 12(3). The Secretary of State may alter the time and place of the hearing either where both the appellant and the director agree or, in exceptional circumstances, without the agreement of the parties, provided that the altered date of the hearing is not earlier than the original date: reg 14(1). In the latter case, the Secretary of State must without delay inform the appellant and the director in writing of the alteration and the reasons for it: reg 14(2).

10 For the meaning of document, see PARA 135 TEXT AND NOTES 5-10.

11 In pursuant to the 1974 Act s 41(3) (see PARA 142 TEXT AND NOTES 1-3).

12 SI 1998/1203 reg 12(4).

13 Ibid reg 11(1). The Secretary of State must supply the director, the appellant and the appointed person with a copy of any such expert's report received in advance of the hearing: reg 11(2). For the meaning of 'copy', see PARA 174 TEXT AND NOTE 4 (definition applied by reg 2). The Secretary of State must pay such reasonable fees as he may determine to any expert so appointed: reg 11(3).

14 See NOTE 3.

15 SI 1998/1203 reg 13.

16 Ibid reg 16(1). Whether or not the hearing is held in public, a member of the Council on Tribunals or its Scottish Committee is entitled to attend the hearing and may remain present during the deliberations of the appointed persons but must not take part in the hearing or in those deliberations: reg 16(2).

17 Ibid reg 15.

18 Ibid reg 17(1).

19 Ibid reg 17(2).

20 Ibid reg 17(3). The reference to the appointed person's report is to a report prepared in accordance with reg 21 (see PARA 142): reg 17(3).

21 The appointed person or, if more than one has been appointed, the appointed person who is to preside, may at any point in the hearing (1) limit any such rights of either party, provided that he is satisfied that to do so will not prevent the appeal from being decided fairly; and (2) adjourn the hearing, but must not do so unless he is satisfied that it is necessary to do so in order for the appeal to be decided fairly: ibid reg 17(5).

22 Ibid reg 17(4). Subject to the provisions of the regulations, an appointed person may regulate the procedure of any oral hearing of an appeal as he thinks fit: reg 18.

23 Ibid reg 20(1).

24 For the meaning of 'determination', see PARA 136 NOTE 2.

25 SI 1998/1203 reg 20(2).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/4. REGULATION; POWERS AND LICENSING/(2) LICENSING/(v) Appeals/142. Directions disposing of appeal.

142. Directions disposing of appeal.

On an appeal under these provisions¹, the Secretary of State² may give such directions for disposing of the appeal as he thinks just, including a direction for the payment of costs by any party to the appeal³. The Secretary of State must give notice⁴ to the parties⁵ of his directions for disposing of the appeal⁶.

In any case where the directions which the Secretary of State gives⁷ are not those which the appellant⁸ stated that he wished the Secretary of State to give⁹, the Secretary of State must give to the appellant a copy of any report relating to the appeal which was given to the Secretary of State¹⁰.

1 Ie under the Consumer Credit Act 1974 s 41: see s 41(3).

2 As to the Secretary of State see para 113 ante.

3 Consumer Credit Act 1974 s 41(3). A direction as to the payment of costs may be made a rule of the High Court on the application of the party in whose favour it is given: s 41(4). 'High Court' means Her Majesty's High Court of Justice or the High Court of Justice in Northern Ireland: s 189(1).

4 For the meaning of 'notice' see para 128 note 3 ante (definition applied by the Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837, reg 1(2)). As from 1 October the Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837, are revoked and replaced: see para 135 note 5 ante.

5 For the meaning of 'party' see para 137 note 2 ante.

6 Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837, reg 18(1). The notice must in addition contain a statement (1) setting out any specific directions which the Secretary of State gives by virtue of the Consumer Credit Act 1974 s 2(2) (see para 113 ante) as to the particulars of the appeal which the Director General of Fair Trading is to cause to be kept in the register; (2) setting out the Secretary of State's reasons for his directions under the Consumer Credit Act 1974 s 41(3); (3) declaring that any person who is dissatisfied in point of law with the decision of the Secretary of State and who had a right to appeal to the Secretary of State from the director's determination (see para 135 ante), whether or not he has exercised that right, may apply to the High Court: see the Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837, reg 18(1)(a), (b), (c). As to the Director General of Fair trading see para 110 ante. As to the register see para 119 ante.

7 Ie under the Consumer Credit Act 1974 s 41(3): see the Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837, reg 18(2).

8 For the meaning of 'appellant' see para 136 note 1 ante.

9 Ie in the notice of grounds (see para 136 ante), or in that notice as amended under the Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837, reg 6 (see para 137 ante) and reg 11 (see para 141 ante) as the case may be: see reg 18(2). For the meaning of 'notice of grounds' see para 136 note 6 ante.

10 Ie under ibid reg 16(1) (see para 141 ante): reg 18(2). As to the meaning of 'copy' see para 174 text and note 4 post (definition applied by reg 1(2)).

UPDATE

135-142 Appeals

Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837 now replaced by Consumer Credit Licensing (Appeals) Regulations 1998, SI 1998/1203 (amended by SI

2003/1400), which make new provision in relation to appeals brought under the Consumer Credit Act 1974 s 41.

See also the Financial Services and Markets Act 2000 s 203(8), Sch 16 para 5.

See further Consumer Credit Act 1974 ss 41ZA, 41ZB (added by SI 2009/1835) (Tribunal Procedure Rules: suspension of OFT determinations; disposal of appeals).

142 [Determination of appeal by the Secretary of State]

TEXT AND NOTES--Replaced.

On an appeal under these provisions¹, the Secretary of State² may give such directions for disposing of the appeal as he thinks just, including a direction for the payment of costs by any party to the appeal³.

Where the appointed person has completed the hearing of oral representations⁴, he must provide for the Secretary of State a reasoned report of the hearing which must (1) take into account any representations made and evidence produced in the course of the appeal; (2) include any findings of fact or rulings on points of law relevant to his recommendation; (3) include his recommendations as to the determination of the appeal by the Secretary of State and as to the payment of costs; and (4) be signed by the appointed person⁵.

The Secretary of State must consider the report and must, as soon as practicable thereafter, give notice⁶ to the parties⁷ of his directions for disposing of the appeal⁸. Such notice must, in addition to such directions, contain a statement (a) setting out any specific directions which the Secretary of State gives⁹ as to the particulars of the appeal which the Director General of Fair Trading¹⁰ is to cause to be kept in the register; (b) setting out the Secretary of State's reasons for his directions for disposing of the appeal¹¹; and (c) declaring that any person who is dissatisfied in point of law with the decision of the Secretary of State and who had a right to appeal to the Secretary of State from the director's determination, whether or not he has exercised that right, may apply¹² to the High Court¹³.

In any case where the Secretary of State gives directions for disposing of the appeal¹⁴, he must give to the appellant¹⁵ a copy¹⁶ of any report relating to the appeal which was given to the Secretary of State by the appointed person¹⁷.

The Secretary of State must make such arrangements for the publication of his decision as he considers appropriate¹⁸.

1 le under the Consumer Credit Act 1974 s 41.

2 As to the Secretary of State, see PARA 113.

3 1974 Act s 41(3).

4 As to appointed persons and the hearing of oral representations, see PARA 141.

5 Consumer Credit Licensing (Appeals) Regulations 1998, SI 1998/1203, reg 21. If more than one person has been appointed and has heard the appeal, the report must be signed by any such person, provided that if any appointed person does not agree with any of the recommendations contained in the report he must indicate that he does not agree, giving his reasons: reg 21.

6 For the meaning of 'notice', see PARA 128 NOTE 3 (definition applied by ibid reg 2).

7 For the meaning of 'party', see PARA 139 NOTE 7.

8 le pursuant to the 1974 Act s 41(3) (see TEXT AND NOTES 1-3): SI 1998/1203 reg 22(1).

- 9 le by virtue of the 1974 Act s 2(2).
- 10 As to the Director General of Fair Trading, see PARA 110.
- 11 le under 1974 Act s 41(3).
- 12 By virtue of the Tribunals and Inquiries Act 1992 s 11.
- 13 SI 1998/1203 reg 22(2). In Scotland and Northern Ireland, such an application may be made to the Court of Session or the High Court of Justice in Northern Ireland, respectively: reg 22(2).
- 14 le pursuant to the 1974 Act s 41(3).
- 15 For the meaning of 'appellant', see PARA 136 NOTE 1.
- 16 For the meaning of 'copy', see PARA 174 TEXT AND NOTE 4 (definition applied by SI 1998/1203 reg 2).
- 17 Ibid reg 22(3).
- 18 Ibid reg 23(1) (amended by SI 2003/1400).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/5. SEEKING BUSINESS/ (1) ADVERTISING/(i) In General/143. Statutory control of advertising.

5. SEEKING BUSINESS

(1) ADVERTISING

(i) In General

143. Statutory control of advertising.

The Consumer Credit Act 1974¹ and the Consumer Credit (Advertisements) Regulations 1989² impose detailed requirements relating to advertising³. There are also certain other statutory controls and codes of practice⁴.

Under the Consumer Credit Act 1974 there are specific offences relating to advertising⁵, and infringement of the regulations made under the Act is also a criminal offence⁶.

There is no civil sanction under the Consumer Credit Act 1974 for breach of the Act or the regulations in relation to advertising, and any resulting agreement is not thereby unenforceable⁷. This does not, however, affect any right at common law to rescission or any right to damages for misrepresentation⁸.

1 See the Consumer Credit Act 1974 Pt IV (ss 43-54): see para 144 et seq post. As to advertising in relation to credit-brokers see s 151; and para 279 post. For the meaning of 'credit-broker' see para 94 ante.

2 See the Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125: see para 145 et seq post.

3 See para 144 et seq post.

4 See paras 66-67 ante.

5 See para 150 post.

6 See the Consumer Credit Act 1974 s 167(2); and para 145 post.

7 See ibid s 170(1); and para 301 post.

8 As to rescission see paras 31, 65 ante; and CONTRACT. As to misrepresentation see paras 31, 40 ante; and MISREPRESENTATION AND FRAUD.

UPDATE

143-156 Seeking Business

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/5. SEEKING BUSINESS/ (1) ADVERTISING/(i) In General/144. Advertisements to which the Consumer Credit Act 1974 applies.

144. Advertisements to which the Consumer Credit Act 1974 applies.

The provisions of the Consumer Credit Act 1974 which are concerned with seeking business¹ apply to any advertisement² published for the purposes of a business³ carried on by the advertiser⁴ and indicating that the advertiser is willing to provide credit⁵ or to enter into an agreement for the bailment of goods by him⁶.

'Advertisement' includes every form of advertising, whether in a publication, by television or radio, by display of notices, signs, labels, showcards or goods, by distribution of samples, circulars, catalogues, price lists or other material, by exhibition of pictures, models or films, or in any other way; and references to the publishing of advertisements must be construed accordingly⁷.

'Advertiser', in relation to an advertisement, is not limited to the person who places the advertisement, but means any person indicated by the advertisement as willing to enter into transactions to which the advertisement relates⁸.

An advertisement does not fall within these provisions if the advertiser does not carry on (1) a consumer credit business or consumer hire business⁹; or (2) a business in the course of which he provides credit to individuals secured on land¹⁰; or (3) a business which comprises or relates to unregulated agreements where (a) the law applicable to the agreement is the law of a country outside the United Kingdom¹¹; and (b) if the proper law of the agreement were the law of a part of the United Kingdom the agreement would be a regulated agreement¹².

The Secretary of State¹³ may by order provide that these provisions¹⁴ are not to apply to other advertisements of a description specified in the order¹⁵.

1 Ie the Consumer Credit Act 1974 Pt IV (ss 43-54) (as amended). As to the application of the provisions relating to the seeking of business to ancillary credit businesses see para 279 post.

2 See the text and note 7 infra.

3 For the meaning of 'business' see para 81 note 7 ante.

4 See the text and note 8 infra.

5 Consumer Credit Act 1974 s 43(1)(a). As to indicating that an advertiser is willing to provide credit see *Jenkins v Lombard North Central plc* [1984] 1 All ER 828, [1984] 1 WLR 307, DC.

An advertisement does not fall within the Consumer Credit Act 1974 s 43(1)(a) if it indicates (1) that the credit must exceed £25,000 and that no security is required, or the security is to consist of property other than land; or (2) that the credit is available only to a body corporate: s 43(3) (amended by the Consumer Credit (Increase of Monetary Limits) Order 1983, SI 1983/1878, art 4, Schedule Pt II; and by the Consumer Credit (Increase of Monetary Limits) (Amendment) Order 1998, SI 1998/996, art 2). As to the power to alter monetary limits see para 117 ante. For the meaning of 'credit' see para 83 ante; and as to the meaning of 'land' see para 93 note 2 ante. As to bodies corporate see COMPANIES; CORPORATIONS.

6 Consumer Credit Act 1974 s 43(1)(b). An advertisement does not fall within s 43(1)(b) if it indicates that the advertiser is not willing to enter into a consumer hire agreement: s 43(4). For the meaning of 'consumer hire agreement' see para 82 ante. For the meaning of 'goods' see para 82 note 5 ante. As to bailment generally see BAILMENT.

As to the advertisements to which the Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, apply see para 146 post.

7 Consumer Credit Act 1974 s 189(1). See also s 188(1), Sch 2 Pt II example 2; and para 177 post.

8 Ibid s 189(1). See further Sch 2 Pt II example 2. See also *R v Delmayne* [1970] 2 QB 170, [1969] 2 All ER 980, CA; *R v Munford and Ahearne* [1995] CCLR 16, 159 JP 395, CA.

9 Consumer Credit Act 1974 s 43(2)(a). For the meaning of 'consumer credit business' see para 81 ante. For the meaning of 'consumer hire business' see para 82 ante.

10 Ibid s 43(2)(b). For the meaning of 'individual' see para 80 note 1 ante.

It seems that the wording of s 43(2)(b) encompasses businesses carried on in relation to agreements secured on land, whether regulated, unregulated or exempt. For the meaning of 'unregulated' see para 79 ante. As to exempt agreements see para 99 et seq ante.

11 Ibid s 43(2)(c)(i) (amended by the Contracts (Applicable Law) Act 1990 s 5, Sch 4 para 2). For the meaning of 'United Kingdom' see para 70 note 4 ante.

12 Consumer Credit Act 1974 s 43(2)(c)(ii). For the meaning of 'regulated agreement' see para 79 ante.

13 As to the Secretary of State see para 113 ante.

14 In the Consumer Credit Act 1974 Pt IV (as amended).

15 Ibid s 43(5). As to the power of the Secretary of State to make orders generally see para 114 ante. The Secretary of State has made the Consumer Credit (Exempt Advertisements) Order 1985, SI 1985/621, which came into operation on 20 May 1985: see art 1. Advertisements which are exempted are:

16 (1) advertisements in so far as they relate to consumer credit agreements to which the Consumer Credit (Exempt Agreements) Order 1985, SI 1985/620, art 3(1)(a), (c), or (d) (revoked: see now the Consumer Credit (Exempt Agreements) Order 1989, SI 1989/869, art 3(1)(a), (c), (d); and see para 102 ante) applies: Consumer Credit (Exempt Advertisements) Order 1985, SI 1985/621, art 2(a). For the meaning of 'consumer credit agreement' see para 81 ante;

17 (2) advertisements in so far as they relate to consumer credit agreements to which the Consumer Credit (Exempt Agreements) Order 1985, SI 1985/620, art 4(1)(b) (revoked: see now the Consumer Credit (Exempt Agreements) Order 1989, SI 1989/869, art 4(1)(b); and see para 103 ante) applies: Consumer Credit (Exempt Advertisements) Order 1985, SI 1985/621, art 2(b);

18 (3) advertisements in so far as they relate to consumer credit agreements to which the Consumer Credit (Exempt Agreements) Order 1985, SI 1985/620, art 5 (revoked: see now the Consumer Credit (Exempt Agreements) Order 1989, SI 1989/869, art 5; and see para 104 ante) applies: Consumer Credit (Exempt Advertisements) Order 1985, SI 1985/621, art 2(c);

19 (4) advertisements in so far as they relate to consumer hire agreements to which the Consumer Credit (Exempt Agreements) Order 1985, SI 1985/620, art 6 (revoked: see now the Consumer Credit (Exempt Agreements) Order 1989, SI 1989/869, art 6; and see para 106 ante) applies: Consumer Credit (Exempt Advertisements) Order 1985, SI 1985/621, art 2(d);

20 (5) advertisements in so far as they relate to agreements which would be consumer credit agreements if the credit provided thereunder were not to exceed the monetary limit, being advertisements which would otherwise fall within heads (1), (2) or (3) supra: art 2(e). Article 2(e) refers to '£15,000', but the monetary limit has now been increased to £25,000: see para 81 ante;

21 (6) advertisements in so far as they relate to agreements which would be consumer hire agreements if the payments thereunder were not required to exceed the monetary limit, being advertisements which would otherwise fall within head (4) supra: art 2(f). Article 2(f) refers to '£15,000', but the monetary limit has now been increased to £25,000: see para 82 ante.

UPDATE

143-156 Seeking Business

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory

Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

144 Advertisements to which the Consumer Credit Act 1974 applies

NOTE 5--1974 Act s 43(3) further amended: Consumer Credit Act 2006 s 2(3), Sch 4. See further 1974 Act s 43(3A), (3B) (added by the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/5. SEEKING BUSINESS/ (1) ADVERTISING/(i) In General/145. Power to make regulations.

145. Power to make regulations.

The Secretary of State¹ is required to make regulations² as to the form and content of advertisements³ to which the relevant provisions of the Consumer Credit Act 1974⁴ apply; and the regulations must contain such provisions as appear to him appropriate with a view to ensuring that, having regard to its subject matter and the amount of detail included in it, an advertisement conveys a fair and reasonably comprehensive indication of the nature of the credit⁵ or hire facilities offered by the advertiser⁶ and of their true cost to persons using them⁷. Regulations may in particular (1) require specified information to be included in the prescribed manner in advertisements, and other specified material to be excluded⁸; (2) contain requirements to ensure that specified information is clearly brought to the attention of persons to whom advertisements are directed, and that one part of an advertisement is not given insufficient or excessive prominence compared with another⁹.

A person who contravenes any regulations made under these provisions commits an offence¹⁰.

1 As to the Secretary of State see para 113 ante.

2 For the meaning of 'regulations' see para 114 note 2 ante. As to the power to make regulations generally see para 114 ante. As to the regulations made see the Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125 (as modified); and para 146 et seq post.

3 For the meaning of 'advertisement' see para 144 text and note 7 ante.

4 Ie the Consumer Credit Act 1974 Pt IV (ss 43-54) (as amended).

5 For the meaning of 'credit' see para 83 ante.

6 For the meaning of 'advertiser' see para 144 text and note 8 ante.

7 Consumer Credit Act 1974 s 44(1).

8 Ibid s 44(2)(a).

9 Ibid s 44(2)(b).

10 Ibid s 167(2). See also *Jenkins v Lombard North Central plc* [1984] 1 All ER 828, [1984] 1 WLR 307, DC. An offence under the Consumer Credit Act 1974 s 167(2) is punishable on summary conviction by a fine not exceeding the prescribed sum, and on conviction on indictment by a maximum of two years' imprisonment or a fine or both: s 167(1), Sch 1 (amended by the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see para 120 note 15 ante. As to offences relating to advertising see also para 150 post. As to offences and enforcement under the Consumer Credit Act 1974 generally see para 298 et seq post.

UPDATE

143-156 Seeking Business

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/5. SEEKING BUSINESS/ (1) ADVERTISING/(ii) Form and Content of Advertisements/146. Form and content of advertisements generally.

(ii) Form and Content of Advertisements

146. Form and content of advertisements generally.

The Consumer Credit (Advertisements) Regulations 1989¹ set out requirements as to the form and content of advertisements².

Under the regulations, the person who causes any credit advertisement³ to be published must ensure that, subject to the following provisions, every such advertisement is one of the following: (1) a simple credit advertisement⁴; (2) an intermediate credit advertisement⁵; (3) a full credit advertisement⁶; or (4) a full credit advertisement which invites individuals⁷, being individuals who at the date the advertisement is published are debtors under agreements made with the advertiser, to agree to a specified variation of those agreements⁸.

The person who causes any hire advertisement⁹ to be published must ensure that, subject to the following provisions, every such advertisement is one of the following: (a) a simple hire advertisement¹⁰; (b) an intermediate hire advertisement¹¹; (c) a full hire advertisement¹²; or (d) a full hire advertisement which invites individuals, being individuals who at the date the advertisement is published are hirers under agreements made with the advertiser, to agree to a specified variation of those agreements¹³.

Specific information¹⁴ required to appear in every credit advertisement or hire advertisement must be clear and easily legible and must be shown together as a whole¹⁵. There are also requirements as to the prominence to be given to the statement of the APR and words shown in capital letters in any prescribed form of statement¹⁶.

In any advertisement relating to credit to be provided under a consumer credit agreement or relating to a consumer hire agreement¹⁷, as the case may be, where (i) the advertisement refers to transactions of a particular class; and (ii) any item of information¹⁸ which applies in relation to one transaction of a particular class differs from an item of the like information which applies in relation to another transaction of the same class, there may be substituted for such an item in the advertisement representative information¹⁹ together with an indication that the information is representative information²⁰.

These provisions as to the form and content of advertisements²¹ do not apply to a credit advertisement contained in, or in a separate document issued with, a publication published by or on behalf of a dealer which relates to goods or services which may be sold or supplied by him in a calendar or seasonal period specified in the publication if the advertisement contains certain information²² and no other indication that a person is willing to provide credit²³.

An advertisement²⁴ which (A) is conspicuously displayed on any part of the premises of a dealer²⁵; and (B) specifies goods or services the acquisition of which from that dealer may be financed by credit and which may be acquired from that part of those premises²⁶, is to be treated as complying with the Consumer Credit (Advertisements) Regulations 1989²⁷ if specified information²⁸, in the case of goods, is clearly marked on or displayed in close proximity to the goods and, in the case of services, is displayed at any place on the premises at which customers may enquire about them, with an indication that other information relating to the supply of goods or services on credit is displayed on the premises but without any other information indicating that the goods or services are available on credit²⁹.

1 Ie the Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, which came into force on 1 February 1990 (reg 1(1)). As to the regulations see also *Jenkins v Lombard North Central plc*[1984] 1 All ER 828, [1984] 1 WLR 307, DC; *R v Baldwins Garage (Warrington) Ltd* [1988] Crim LR 438; *Currys Ltd v Jessop* [1996] CCLR 1, 1988 SCCR 447; *Metsoja v H Norman Pitt & Co Ltd* [1990] CCLR 12, [1989] Crim LR 560; *National Westminster Bank plc v Devon County Council* [1993] CCLR 69, 158 JP 156; *Carrington Carr Ltd v Leicestershire County Council* [1994] CCLR 14, [1993] Crim LR 938.

As to the duty to make regulations see the Consumer Credit Act 1974 s 44; and para 145 ante. For the meaning of 'regulations' see para 114 note 2 ante. As to the power to make regulations generally see para 114 ante.

The Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, revoke the previous regulations (see reg 1(7), Sch 4) and contain transitional provisions (see reg 10).

2 For the meaning of 'advertisement' see para 144 text and note 7 ante. The Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, do not apply to any advertisement which (1) whether expressly or by implication indicates clearly that a person is willing to provide credit or to enter into an agreement for the bailment of goods, for the purposes of a person's business; and (2) does not indicate, whether expressly or by implication, that a person is willing to do either of those things otherwise than for the purposes of such a business: reg 9(1). References in reg 9(1) to a business do not include references to a business carried on by the advertiser or any person acting as a credit-broker in relation to the credit or hire facility to which the advertisement relates: reg 9(2). For the meaning of 'business' see para 81 note 7 ante. For the meaning of 'credit' see para 83 ante. For the meaning of 'goods' see para 82 note 5 ante. For the meaning of 'advertiser' see para 144 text and note 8 ante. For the meaning of 'credit-broker' see para 94 ante. As to bailment see BAILMENT.

As to the detailed requirements as to form and content of advertisements see also paras 147-149 post.

3 'Credit advertisement' means an advertisement to which the Consumer Credit Act 1974 Pt IV (ss 43-54) (as amended) applies by virtue of it falling within s 43(1)(a) (see para 144 ante) or which falls within s 151(1) in so far as s 44 is applied to such an advertisement (see para 279 post): Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, reg 1(2). See also *Carrington Carr Ltd v Leicestershire County Council* [1994] CCLR 14, [1993] Crim LR 938.

A credit advertisement must not include (1) the word 'overdraft' or any cognate expression as describing any agreement for running-account credit except an agreement enabling the debtor to overdraw on a current account (Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, reg 7(a)); (2) any indication whether express or implied that any of the terms of a credit agreement impose on customers a lesser expense or obligation than is being imposed by other persons, except in the case of a full credit advertisement which states, in close proximity to that indication with no less particularity and prominence, the other persons concerned and their comparable terms (reg 7(b)); (3) the expression 'interest free' or any expression to the like effect indicating that a customer is liable to pay no greater amount in respect of a transaction financed by credit than he would be liable to pay as a cash purchaser in relation to the like transaction, except where the total amount payable by the debtor does not exceed the cash price (reg 7(c)); or (4) the expression 'no deposit' or any expression to the like effect, except where no advance payments are to be made (reg 7(d)). As to comparative advertising see *Carrington Carr Ltd v Leicestershire County Council* supra; *Jessop v First National Securities Ltd* [1993] CCLR 33, 1988 SCCR 1. As to the extent of the Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, reg 7(c) see *Metsoja v H Norman Pitt & Co Ltd* [1990] CCLR 12, [1989] Crim LR 560.

For the meaning of 'running-account credit' see para 84 ante. For the meaning of 'debtor' see para 81 note 3 ante. 'Current account' means an account under which the customer may, by means of cheques or similar orders payable to himself or to any other person or by any other means, obtain or have the use of money held or made available by the person with whom the account is kept and which records alterations in the financial relationship between the said person and the customer: Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, reg 1(2). For the meaning of 'financed' see para 83 note 8 ante. 'Cash purchaser' means, in relation to any advertisement, a person who, for a money consideration, acquires goods, land or other things, or is provided with services, under a transaction which is not financed by credit: reg 1(2). For the meaning of 'land' see para 93 note 2 ante. 'Cash price' in relation to any goods, services, land or other things means the price or charge at which the goods, services, land or other things may be purchased by, or supplied to, persons for cash, account being taken of any discount generally available from the dealer or supplier in question: reg 1(2). 'Dealer' means, in relation to a hire-purchase, credit-sale or conditional sale agreement under which he is not the creditor, a person who sells or proposes to sell goods, land or other things to the creditor before they form the subject matter of any such agreement and, in relation to any other agreement, means a supplier or his agent: reg 1(2). For the meaning of 'hire-purchase agreement' see para 95 ante. For the meaning of 'credit-sale agreement' see para 93 ante. For the meaning of 'conditional sale agreement' see para 93 ante. For the meaning of 'creditor' see para 81 note 2 ante. 'Supplier' has the meaning assigned to it by the Consumer Credit Act 1974 s 189(1) (see para 86 note 8 ante), except that it does not include, in relation to a hire-purchase, credit-sale or conditional sale agreement, a creditor to whom goods, land or other things are sold or proposed to be sold by a dealer before becoming the subject matter of such an agreement: Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, reg 1(2). 'Advance payment' includes any deposit but does

not include a repayment of credit or any insurance premium or any amount entering into the total charge for credit: reg 1(2). As to the meaning of 'payment' generally see para 84 note 5 ante. For the meaning of 'deposit' see para 83 note 10 ante. In the Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, references to repayment of credit are references to repayments of credit with or without any other amount: reg 1(4). The total charge for credit must be determined in accordance with the Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51 (see para 224 et seq post) and the Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, reg 1(2), Sch 3: reg 1(2). Schedule 3 contains provisions relating to the disclosure of the total charge for credit, and permits the use of representative information and minor variation of the strict requirements in certain circumstances: see Sch 3. As to the total charge for credit see paras 91 ante, 224 et seq post.

4 Ie a credit advertisement containing only the information set out in ibid Sch 1 Pt I paras 1-5 in whole or in part and any other information referred to in Sch 1 Pt I para 6: reg 2(1)(a). As to the maximum information that may be contained in a simple credit advertisement see para 147 post.

5 Ie a credit advertisement containing only the information set out in ibid Sch 1 Pt II paras 1-9 and no other information except as referred to in Sch 1 Pt II para 10: reg 2(1)(b). As to the maximum information that is to be contained in an intermediate credit advertisement see para 148 post.

6 Ie a credit advertisement containing, subject to ibid reg 2(1)(d) (see head (4) in the text), at least the information set out in Sch 1 Pt III: reg 2(1)(c). As to the minimum information that is to be contained in a full credit advertisement see para 149 post.

7 For the meaning of 'individual' see para 80 note 1 ante.

8 Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, reg 2(1)(d). To fall within reg 2(1)(d) the advertisement must contain (1) the name of the advertiser and a postal address of his and the information within Sch 1 Pt III (see note 6 supra) as varied in relation to those agreements if the invitation is accepted by the debtor; and (2) the information, other than the name and a postal address of the advertiser, specified in Sch 1 Pt III which the advertisement does not indicate will remain unaltered if the invitation is accepted: reg 2(1)(d) (i), (ii).

9 'Hire advertisement' means an advertisement to which the Consumer Credit Act Pt IV (as amended) applies by virtue of it falling within s 43(1)(b) (see para 144 ante) or which falls within s 151(1) in so far as s 44 is applied to such an advertisement (see para 279 post): Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, reg 1(2). See also note 3 supra.

10 Ie a hire advertisement containing only the information set out in ibid Sch 2 Pt I paras 1-5 in whole or in part and any other information referred to in Sch 2 Pt I para 6: reg 2(2)(a). The information set out in Sch 2 Pt I is similar to that set out in relation to simple credit advertisements in Sch 1 Pt I (see para 147 post).

11 Ie a hire advertisement containing only the information set out in ibid Sch 2 Pt II paras 1-7 and no other information except as referred to in Sch 2 Pt II para 8: reg 2(2)b). The information set out in Sch 2 Pt II is similar to that set out in relation to intermediate credit agreements in Sch 1 Pt II (see para 148 post). However, the optional information includes the duration of hire: see Sch 2 Pt II para 8.

12 Ie a hire advertisement containing, subject to ibid reg 2(2)(d) (see head (d) in the text), at least the information set out in Sch 2 Pt III, but not containing the expression 'no deposit' or any expression to the like effect, except where no advance payments are to be made by the hirer: reg 2(2)(c). The information set out in Sch 2 Pt III is similar to that set out in relation to full credit agreements in Sch 1 Pt III (see para 149 post). For the meaning of 'hirer' see para 82 note 3 ante.

13 Ibid reg 2(2)(d). To fall within reg 2(2)(d) the advertisement must (1) contain the name of the advertiser and a postal address of his and the information within Sch 2 Pt III (see note 12 supra) as varied in relation to the hire facility if the invitation is accepted by the hirer; and (2) contain the information, other than a name and postal address of the advertiser, specified in Sch 2 Pt III which the advertisement does not indicate will remain unaltered if the invitation is accepted; but (3) not contain the expression 'no deposit' or any expression to the like effect, except where no advance payments are to be made by the hirer: reg 2(2)(d).

14 Ie the specific information referred to in ibid Schs 1, 2: see reg 2(6).

15 Ie subject to the following provisions of the Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, and except for the name and address or telephone number: reg 2(6). Any information in any book, catalogue, leaflet or other document which is likely to vary from time to time must be taken for the purpose of reg 2(6) to be shown together as a whole if (1) it is set out together as a whole in a separate document issued with the book, catalogue, leaflet or other document; and (2) the other information in the credit advertisement or hire advertisement, as the case may be, is shown together as a whole in the book, catalogue, leaflet or other document: reg 2(7).

Information contained in a full credit advertisement relating to credit to be provided under a debtor-creditor-supplier agreement, being an advertisement contained in a publication published by or on behalf of a dealer which relates to goods or services which may be sold or supplied by him, must be taken for the purposes of reg 2(6) to be shown together as a whole:

- 22 (a) if (i) the cash price alone; or (ii) the cash price, any advance payment and the information specified in Sch 1 Pt III paras 12, 13, 14 (see para 149 heads (12), (13), (14) post), and (except in the case of agreements for credit under which the total amount payable by the debtor is not greater than the cash price of the goods or services, the acquisition of which is to be financed by credit under the agreement) the APR, is clearly indicated in close proximity to every description of, or specific reference to, goods or services to which the information in the publication relates (reg 5(a));
- 23 (b) if the remaining information in the advertisement is so presented as to be readily comprehensible as a whole by a prospective debtor and an indication is given in close proximity to any of that information that it relates to all or specified descriptions of goods or services (reg 5(b)); and
- 24 (c) if, except as mentioned in head (a) supra, no information relating to the provision of credit is shown together with the cash price (reg 5(c)).

'The APR' means the annual percentage rate of charge for credit determined in accordance with the Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51 (see para 225 et seq post) and the Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, Sch 3: reg 1(2). Schedule 3 contains provisions relating to the disclosure of the APR, and permits the use of representative information and minor variation of the strict requirements in certain circumstances: see Sch 3. The APR referred to in Sch 1 must be denoted in advertisements as 'APR' or 'annual percentage rate' or 'annual percentage rate of the total charge for credit': reg 2(5). In the case of an advertisement relating to a debtor-creditor agreement enabling the debtor to overdraw on a current account under which the creditor is the Bank of England, an institution authorised under the Banking Act 1987 (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 791 et seq), the Post Office for the purposes of a transaction entered into in the ordinary course of that part of the business of the Post Office which consists of the provision of banking services or a building society incorporated or deemed to be incorporated under the Building Societies Act 1986 (see FINANCIAL SERVICES AND INSTITUTIONS), for any reference in the Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, Sch 1 to the APR there may be substituted a reference to the statement of (A) a rate, expressed to be a rate of interest, being a rate determined as the rate of the total charge for credit calculated on the assumption that only interest is included in the total charge for credit; and (B) the nature and amount of any other charge included in the total charge for credit: reg 2(3). For the meaning of 'debtor-creditor agreement' see para 87 ante. The reference in the Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, reg 2(3) to an institution authorised under the Banking Act 1987 includes a reference to a European deposit-taker: Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 82(1), Sch 10 Pt II para 55. For the meaning of 'European deposit-taker' see para 100 note 13 ante.

16 In every credit advertisement the APR referred to in the Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, Sch 1 must be afforded (1) greater prominence than a statement relating to any other rate of charge (reg 8(1)(a)); and (2) no less prominence than a statement relating to:

- 25 (a) any period (reg 8(1)(b)(i));
- 26 (b) the amount of any advance payment or any indication that no such payment is required (reg 8(1)(b)(ii)); or
- 27 (c) the amount, number or frequency of any other payments or charges (other than the cash price of goods, services, land or other things) or of any repayments of credit (reg 8(1)(b)(iii)).

Where words are shown in capital letters in any prescribed form of statement set out in Sch 1 or Sch 2 and are reproduced in an advertisement they must be afforded no less prominence than any other information relating to credit or bailment of goods which is required or permitted to be included in the advertisement under the Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, except the APR: reg 8(2).

17 For the meaning of 'consumer hire agreement' see para 82 ante.

18 If any item of information mentioned in the Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, reg 3(2): see reg 3(1). The items of information are (1) the APR in an intermediate credit advertisement or a full credit advertisement; or (2) the cash price and the frequency, number or amount of any payment or charge included in Sch 1 Pts II, III and Sch 2 Pts II, III or of any repayment of credit in any full credit advertisement, and the total amount payable by the debtor in any full credit advertisement including its constituent parts: reg 3(2).

19 In *ibid* reg 3, 'representative information' means information shown as a typical example which the advertiser may reasonably expect at the date the information is published to be representative of transactions of the class in question, being transactions which he might then reasonably contemplate that he would enter into on or after that date: reg 3(3).

20 *Ibid* reg 3(1).

21 *Ie ibid* regs 2, 3: see reg 4(1).

22 *Ie* the information specified in *ibid* reg 4(2): see reg 4(1). The information referred to is (1) the name of the creditor, credit-broker or dealer and a postal address of his with or without his occupation or a statement of the general nature of his occupation; and (2) an indication that individuals may obtain on request a quotation in writing about the terms on which the advertiser is prepared to do business: reg 4(2).

23 *Ibid* reg 4(1).

24 *Ie* an advertisement which does not contain either (1) the cash price alone (*ibid* reg 6(1)(a)); or (2) each of the cash price, the information about the APR specified in Sch 1 Pt II para 7 (see para 148 head (7) post) and the information about the total amount payable by the debtor specified in Sch 1 Pt III para 14 (see para 149 head (14) post) (reg 6(1)(b)), but which would otherwise be an intermediate credit advertisement or a full credit advertisement: see reg 6(1), (2).

25 *Ibid* reg 6(2)(a).

26 *Ibid* reg 6(2)(b).

27 *Ie* the Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125: see reg 6(2).

28 *Ie* the information in *ibid* reg 6(1)(a) or (b) (see note 24 heads (1), (2) *supra*): see reg 6(2).

29 *Ibid* reg 6(2). However, an advertisement to which reg 6 applies by virtue of reg 6(1)(b) (see note 24 *supra*) must not be treated as complying with the Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, by virtue of reg 6(2) unless the total amount payable by the debtor in respect of the goods or services specified in the advertisement as goods or services the acquisition of which from the dealer in question may be financed by credit is also, in the case of goods, clearly marked on or displayed in close proximity to the goods and, in the case of services, displayed at any place on the premises at which customers may enquire about them: reg 6(3). The total amount payable in the case of an agreement for running-account credit is to be calculated on each of the following assumptions:

28 (1) the debtor is provided with an amount of credit equal to the cash price of the goods or services less any advance payment required (reg 6(3)(a));

29 (2) there are no changes in the rates of interest on the credit which may be provided under the agreement (reg 6(3)(b));

30 (3) the debtor pays the amount stated in the advertisement or if none is stated the fixed or minimum sums payable under the agreement (reg 6(3)(c));

31 (4) all repayments of credit and of the total charge for credit are made on the due date under the agreement (reg 6(3)(d));

32 (5) the debtor acquires no further goods or is provided with no further services under the agreement (reg 6(3)(e)).

UPDATE

143-156 Seeking Business

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

146-149 Form and Content of Advertisements

Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, replaced by Consumer Credit (Advertisements) Regulations 2004, SI 2004/1484 (amended by SI 2004/2619, SI 2006/2383, SI 2007/827, SI 2008/1277).

146 Form and content of advertisements generally

NOTE 3--See *Holman v Co-operative Wholesale Society Ltd* (2000) 164 JP 699, DC.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/5. SEEKING BUSINESS/ (1) ADVERTISING/(ii) Form and Content of Advertisements/147. Simple advertisements.

147. Simple advertisements.

The maximum information that may be contained in a simple credit advertisement¹ in whole or in part is: (1) the name of the advertiser²; (2) a logo of his, of his associate and of his trade association³; (3) a postal address of his⁴; (4) a telephone number of his⁵; (5) an occupation of his or a statement of the general nature of his occupation⁶; (6) any other information except (a) information that a person is willing to provide credit⁷; or (b) the cash price⁸, or other price, of any goods, services, land or other things⁹.

The information that may be contained in a simple hire agreement¹⁰ is similarly limited¹¹.

1 For the meaning of 'simple credit advertisement' see para 146 note 4 ante. For the meaning of 'credit advertisement' see para 146 note 3 ante.

2 Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, reg 2(1), Sch 1 Pt I para 1. For the meaning of 'advertiser' see para 144 text and note 8 ante.

Any reference in the Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, to the name of any person is (1) in the case of any person covered by a standard licence, a reference to any name of his specified in the licence; and (2) in the case of any other person, a reference to any name under which he carries on business: reg 1(5). For the meaning of 'standard licence' see para 122 ante. For the meaning of 'licence' see para 119 note 3 ante.

3 Ibid Sch 1 Pt I para 2. As to associates see para 92 ante.

4 Ibid Sch 1 Pt I para 3.

5 Ibid Sch 1 Pt I para 4.

6 Ibid Sch 1 Pt I para 5.

7 For the meaning of 'credit' see para 83 ante.

8 For the meaning of 'cash price' see para 146 note 3 ante.

9 Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, Sch 1 Pt I para 6. For the meaning of 'goods' see para 82 note 5 ante; and for the meaning of 'land' see para 93 note 2 ante.

10 For the meaning of 'simple hire advertisement' see para 146 note 10 ante. For the meaning of 'hire advertisement' see para 146 note 9 ante.

11 See para 146 note 10 ante.

UPDATE

143-156 Seeking Business

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

146-149 Form and Content of Advertisements

Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, replaced by Consumer Credit (Advertisements) Regulations 2004, SI 2004/1484 (amended by SI 2004/2619, SI 2006/2383, SI 2007/827, SI 2008/1277).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/5. SEEKING BUSINESS/ (1) ADVERTISING/(ii) Form and Content of Advertisements/148. Intermediate advertisements.

148. Intermediate advertisements.

The maximum compulsory information that may be contained in an intermediate credit advertisement¹ is:

- 23 (1) the name of the advertiser² and a postal address or telephone number of his (or a freephone number), except (a) in the case of advertisements in any form on the premises³ of a dealer⁴ or creditor⁵, not being advertisements in writing which customers are intended to take away; (b) in the case of advertisements which include the name and address of a dealer; and (c) in the case of advertisements which include the name of a credit-broker⁶ and a postal address or telephone number of his (or a freephone number)⁷;
- 24 (2) a statement that any security⁸ is or may be required, and where the security comprises or may comprise a mortgage or charge on the debtor's⁹ home a statement in the following form: 'YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP REPAYMENTS ON A MORTGAGE OR OTHER LOAN SECURED ON IT'¹⁰;
- 25 (3) a statement of any contract of insurance required, not being a contract of insurance against the risk of loss or damage to goods or land or any risk relating to the use of the goods or land¹¹;
- 26 (4) a statement of any requirement to place on deposit any sum of money in any account with any person¹²;
- 27 (5) in the case of an advertisement published for the purposes of a business of credit brokerage¹³ carried on by any person, the amount of any fee payable by the debtor or an associate of his to a credit-broker or a statement of the method of its calculation¹⁴;
- 28 (6) either a statement that individuals¹⁵ may obtain on request a quotation¹⁶ in writing about the terms on which the advertiser is prepared to do business or a statement that individuals may obtain on request a document containing no less information than a full credit advertisement¹⁷ about the terms on which the advertiser is prepared to do business¹⁸;
- 29 (7) where a cash price is given in the advertisement in relation to any specified goods, services, land or other things, having a particular cash price, the acquisition of which from an identified dealer¹⁹ may be financed by credit²⁰ or where other information about financial and related particulars set out in head (vi) or head (ix) below is given in the advertisement, (a) the APR²¹ in relation to any actual or prospective agreement, other than an agreement specified in head (b) below, or a statement indicating that the total amount payable by the debtor is not greater than the total cash price of the goods, services, land or other things, the acquisition of which is to be financed by credit under the agreement; (b) the APR in relation to a debtor-creditor-supplier agreement for running-account credit²² under which the debtor agrees to pay the creditor an amount specified in the agreement on specified occasions, there is a credit limit²³ and charges for credit are either a fixed amount in respect of each transaction or calculated as a proportion of the price payable under a transaction financed by the credit, the APR being calculated on each of the following assumptions respectively: (i) the debtor is provided with an amount of credit at the date of the making of the agreement which, taken with the amount of the charge for that credit ascertained at that date, is equal to the credit limit, and the debtor repays the sum of the said amounts by payments of the

- amount specified in the agreement on the specified occasions and makes no other payment and obtains no further credit in relation to the account; and (ii) a like assumption save that the said sum of the said amounts is to be taken to be one-third of the credit limit; and (c) in relation to agreements under which the rate or amount of any item included in the total charge for credit²⁴ will or may be varied, a statement indicating that the rate or amount will or may be varied²⁵;
- 30 (8) in the case of an advertisement relating to credit to be provided under a debtor-creditor-supplier agreement, where the advertisement specifies goods, services, land or other things having a particular cash price, the acquisition of which from an identified dealer may be financed by the credit, the cash price of such goods, services, land or other things²⁶;
- 31 (9) where the advertisement is for a mortgage or other loan secured on property and repayments are to be made in a currency other than sterling²⁷, a statement in the following form: 'THE STERLING EQUIVALENT OF YOUR LIABILITY UNDER A FOREIGN CURRENCY MORTGAGE MAY BE INCREASED BY EXCHANGE RATE MOVEMENTS'²⁸.

An intermediate credit advertisement may also contain any other optional information, except that no information may be shown indicating that a person is willing to provide credit²⁹ other than as follows: (A) a logo of his, or his associate and of his trade association; (B) an occupation of his or a statement of the general nature of his occupation; (C) a statement that credit facilities are, or that a specified category of credit facility is, available, and where applicable a statement indicating the period or the maximum period of availability; (D) in the case of any credit being available only to, or on terms which are applicable only to, persons who fall within any class or group, a statement of that fact identifying that class or group; (E) where not shown under head (7) above, the information about the APR specified in heads (7)(a), (7)(b) and (7)(c) above; (F) where the APR is specified in the advertisement, the rate of any interest on the credit; (G) the amount of credit which may be provided under a consumer credit agreement³⁰ or an indication of one or both of the maximum amount and the minimum amount of credit which may be provided; (H) the nature of any security required where this does not comprise a mortgage or charge on the debtor's home; (I) where the APR is specified in the advertisement, a statement as to whether an advance payment³¹ is required and if so the amount or minimum amount of the payment expressed as a sum of money or as a percentage; (J) a statement indicating any respect in which cash purchasers³² are treated differently from those acquiring any goods, land or other things, or being provided with services, under a transaction which is financed by credit; (K) in the case of an advertisement to which head (1)(c) above applies, the name of the creditor and a postal address or telephone number of his (or a freephone number)³³.

The information that may be contained in an intermediate hire advertisement³⁴ is similarly limited³⁵.

1 For the meaning of 'intermediate credit advertisement' see para 146 note 5 ante. For the meaning of 'credit advertisement' see para 146 note 3 ante.

2 For the meaning of 'advertiser' see para 144 text and note 8 ante.

3 'Premises' includes any place, stall, vehicle, vessel, aircraft or hovercraft at which a person is carrying on any business, whether on a permanent or temporary basis: Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, reg 1(2).

4 For the meaning of 'dealer' see para 146 note 3 ante.

5 For the meaning of 'creditor' see para 81 note 2 ante.

6 For the meaning of 'credit-broker' see para 94 ante.

- 7 Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, reg 2(1), Sch 1 Pt II para 1.
- 8 As to security see para 200 et seq post.
- 9 For the meaning of 'debtor' see para 81 note 3 ante.
- 10 Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, Sch 1 Pt II para 2. As to mortgages generally see MORTGAGE.
- 11 Ibid Sch 1 Pt II para 3. 'Contract of insurance' means a contract of insurance to which the Insurance Companies Act 1982 applies (see INSURANCE): Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, reg 1(2). For the meaning of 'goods' see para 82 note 5 ante; and for the meaning of 'land' see para 93 note 2 ante.
- 12 Ibid Sch 1 Pt II para 4.
- 13 As to credit brokerage see para 272 post.
- 14 Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, Sch 1 Pt II para 5.
- 15 For the meaning of 'individual' see para 80 note 1 ante.
- 16 As to quotations see para 155 post.
- 17 For the meaning of 'full credit advertisement' see para 146 note 6 ante.
- 18 Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, Sch 1 Pt II para 6. This provision does not apply to an advertisement in so far as it relates to fixed-sum credit to be provided under a debtor-creditor-supplier agreement, where the cash price of the goods, services, land or other things to be supplied under a transaction financed by the agreement does not exceed £50: reg 2(4). For the meaning of 'fixed-sum credit' see para 85 ante. For the meaning of 'debtor-creditor-supplier agreement' see para 87 ante. For the meaning of 'cash price' see para 146 note 3 ante.
- 19 'Identified dealer' means, in relation to an advertisement (1) a dealer who is named in the advertisement or is identified in it by reference to a business connection he has with the advertiser; or (2) a dealer upon whose premises the advertisement is published: *ibid* reg 1(2).
- 20 For the meaning of 'credit' see para 83 ante.
- 21 For the meaning of 'the APR' see para 146 note 15 ante.
- 22 For the meaning of 'running-account credit' see para 84 ante.
- 23 For the meaning of 'credit limit' see para 84 note 6 ante.
- 24 As to the total charge for credit see paras 91 ante, 224 et seq post.
- 25 Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, Sch 1 Pt II para 7. This provision does not apply to an advertisement in so far as it relates to fixed-sum credit to be provided under a debtor-creditor-supplier agreement, where the cash price of the goods, services, land or other things to be supplied under a transaction financed by the agreement does not exceed £50: reg 2(4).
- 26 Ibid Sch 1 Pt II para 8.
- 27 As to sterling see FINANCIAL SERVICES AND INSTITUTIONS.
- 28 Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, Sch 1 Pt II para 9.
- 29 As to indicating that a person is willing to provide credit see *Jenkins v Lombard North Central plc* [1984] 1 All ER 828, [1983] 1 WLR 307, DC; and para 144 note 5 ante.
- 30 For the meaning of 'consumer credit agreement' see para 81 ante. Where any expression is used in the Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, and in the Consumer Credit Act 1974, for the purposes of the regulations that expression must be construed as if in the Act (except s 8: see para 81 ante) references to consumer credit agreements and to regulated agreements, being consumer credit agreements, included references to personal credit agreements: Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, reg 1(6). For the meaning of 'regulated agreement' see para 79 ante; and for the meaning of 'personal credit agreement' see para 80 ante.

- 31 For the meaning of 'advance payment' see para 146 note 3 ante.
- 32 For the meaning of 'cash purchaser' see para 146 note 3 ante.
- 33 Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, Sch 1 Pt II para 10.
- 34 For the meaning of 'intermediate hire advertisement' see para 146 note 11 ante. For the meaning of 'hire advertisement' see para 146 note 9 ante.
- 35 See para 146 note 11 ante.

UPDATE

143-156 Seeking Business

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

146-149 Form and Content of Advertisements

Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, replaced by Consumer Credit (Advertisements) Regulations 2004, SI 2004/1484 (amended by SI 2004/2619, SI 2006/2383, SI 2007/827, SI 2008/1277).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/5. SEEKING BUSINESS/ (1) ADVERTISING/(ii) Form and Content of Advertisements/149. Full advertisements.

149. Full advertisements.

The minimum information that is to be contained in a full credit advertisement¹ is:

- 32 (1) the name and a postal address of the advertiser², except (a) in the case of advertisements in any form on the premises³ of a dealer⁴ or creditor⁵, not being advertisements in writing which customers are intended to take away; (b) in the case of advertisements which include the name and address of a dealer; and (c) in the case of advertisements which include the name and a postal address of a credit-broker⁶;
- 33 (2) a statement that any security⁷ is or may be required, and where the security comprises or may comprise a mortgage or charge on the debtor's⁸ home a statement in the following form: 'YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP REPAYMENTS ON A MORTGAGE OR OTHER LOAN SECURED ON IT'⁹;
- 34 (3) a statement of any contract of insurance required, not being a contract of insurance against the risk of loss or damage to goods or land or any risk relating to the use of the goods or land¹⁰;
- 35 (4) a statement of any requirement to place on deposit any sum of money in any account with any person¹¹;
- 36 (5) in the case of an advertisement published for the purposes of a business of credit brokerage¹² carried on by any person, the amount of any fee payable by the debtor or an associate of his to a credit-broker¹³ or a statement of the method of its calculation¹⁴;
- 37 (6) a statement that individuals¹⁵ may obtain on request a quotation¹⁶ in writing about the terms on which the advertiser is prepared to do business¹⁷;
- 38 (7) (a) the APR¹⁸ in relation to any actual or prospective agreement, other than an agreement specified in head (7)(b) below, or a statement indicating that the total amount payable by the debtor is not greater than the total cash price of the goods, services, land or other things, the acquisition of which is to be financed by credit¹⁹ under the agreement; (b) the APR in relation to a debtor-creditor-supplier agreement for running-account credit²⁰ under which the debtor agrees to pay the creditor an amount specified in the agreement on specified occasions, there is a credit limit²¹ and charges for credit are either a fixed amount in respect of each transaction or calculated as a proportion of the price payable under a transaction financed by the credit, the APR being calculated on each of the following assumptions respectively: (i) the debtor is provided with an amount of credit at the date of the making of the agreement which, taken with the amount of the charge for that credit ascertained at that date, is equal to the credit limit, and the debtor repays the sum of the said amounts by payments of the amount specified in the agreement on the specified occasions and makes no other payment and obtains no further credit in relation to the account; and (ii) a like assumption save that the said sum of the said amounts is to be taken to be one-third of the credit limit; (c) in relation to agreements under which the rate or amount of any item included in the total charge for credit²² will or may be varied, a statement indicating that the rate or amount will or may be varied²³;
- 39 (8) in the case of any credit being available only to, or on terms which are applicable only to, persons who fall within any class or group, a statement of that fact identifying that class or group²⁴;

- 40 (9) the nature of any security required where this does not comprise a mortgage or charge on the debtor's home²⁵;
- 41 (10) a statement of the frequency and number of any advance payments²⁶ required and of the amount or minimum amount expressed as a sum of money or as a percentage or a statement indicating the manner in which the amount will be determined²⁷;
- 42 (11) a statement indicating any respect in which cash purchasers²⁸ are treated differently from those acquiring any goods, land or other things, or being provided with services, under a transaction which is financed by credit²⁹;
- 43 (12) (a) in the case of an advertisement relating to an agreement for running-account credit, a statement of the frequency of the repayments of credit under the advertised transaction and of the amount of each repayment stating whether it is a fixed or minimum amount, or a statement indicating the manner in which the amount will be determined; (b) in the case of other credit advertisements, a statement of the frequency, number and amount of repayments of credit; (c) in the case of an advertisement relating to an agreement under which interest on the credit to be provided is of a type to which certain provisions of the Income and Corporation Taxes Act 1988³⁰ apply, (i) a further statement indicating whether the amount of any repayment of credit mentioned in the advertisement is calculated before or after the deduction of tax; and (ii) where such an advertisement indicates the amount of repayments both before and after the deduction of tax, and in one or other such case not all the repayments would be equal for the purposes of head (12)(a) above, a statement indicating the lowest and the highest amounts and the exact year or other period in respect of which each such amount is to be paid, unless such information is included in the statement required under head (12)(a) above³¹;
- 44 (13) (a) a statement indicating the description and amount of any other payments and charges which may be payable under the transaction advertised; (b) where the liability of the debtor to make any payment cannot be ascertained at the date the advertisement is published, a statement indicating the description of the payment in question and the circumstances in which the liability to make it will arise³²;
- 45 (14) in the case of an advertisement relating to credit to be provided under a consumer credit agreement³³ which is repayable at specified intervals or in specified amounts and other than cases under which the sum of the payments within heads (14)(a) to (14)(c) below is not greater than the cash price referred to in head (15) below, the total amount payable by the debtor, being the total of (a) advance payments; (b) the amount of credit repayable by the debtor; and (c) the amount of the total charge for credit³⁴. However, in the case of an agreement for running-account credit³⁵ the total amount payable by the debtor under this provision is to be calculated on each of the following assumptions: (i) the debtor is provided with an amount of credit equal to the cash price of the goods or services less any advance payment required; (ii) there are no changes in the rates of interest on the credit which may be provided under the agreement; (iii) the debtor pays the amount stated in the advertisement or if none is stated the fixed or minimum sums payable under the agreement; (iv) all repayments of credit and of the total charge for credit are made on the due date under the agreement; and (v) the debtor acquires no further goods or is provided with no further services under the agreement³⁶;
- 46 (15) in the case of an advertisement relating to credit to be provided under a debtor-creditor-supplier agreement, where the advertisement specifies goods, services, land or other things having a particular cash price, the acquisition of which from an identified dealer³⁷ may be financed by the credit, the cash price of such goods, services, land or other things³⁸;

- 47 (16) where the advertisement is for a mortgage or other loan secured on property and repayments are to be made in a currency other than sterling³⁹ a statement in the following form: 'THE STERLING EQUIVALENT OF YOUR LIABILITY UNDER A FOREIGN CURRENCY MORTGAGE MAY BE INCREASED BY EXCHANGE RATE MOVEMENTS'⁴⁰.

The minimum information that may be contained in a full hire advertisement⁴¹ is similar to but, by virtue of the nature of the contract, less than that set out above in relation to full credit agreements⁴².

- 1 For the meaning of 'full credit advertisement' see para 146 note 6 ante. For the meaning of 'credit advertisement' see para 146 note 3 ante.
- 2 For the meaning of 'advertiser' see para 144 text and note 8 ante.
- 3 For the meaning of 'premises' see para 148 note 3 ante.
- 4 For the meaning of 'dealer' see para 146 note 3 ante.
- 5 For the meaning of 'creditor' see para 81 note 2 ante.
- 6 Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, reg 2(1), Sch 1 Pt III para 1. For the meaning of 'credit-broker' see para 94 ante.
- 7 As to security see para 200 et seq post.
- 8 For the meaning of 'debtor' see para 81 note 3 ante.
- 9 Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, Sch 1 Pt III para 2. As to mortgages generally see MORTGAGE.
- 10 Ibid Sch 1 Pt III para 3. For the meaning of 'contract of insurance' see para 148 note 11 ante. For the meaning of 'goods' see para 82 note 5 ante; and for the meaning of 'land' see para 93 note 2 ante.
- 11 Ibid Sch 1 Pt III para 4.
- 12 For the meaning of 'credit brokerage' see para 272 post.
- 13 For the meaning of 'credit-broker' see para 94 ante.
- 14 Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, Sch 1 Pt III para 5.
- 15 For the meaning of 'individual' see para 80 note 1 ante.
- 16 As to quotations see para 155 post.
- 17 Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, Sch 1 Pt III para 6. This provision does not apply to an advertisement in so far as it relates to fixed-sum credit to be provided under a debtor-creditor-supplier agreement, where the cash price of the goods, services, land or other things to be supplied under a transaction financed by the agreement does not exceed £50: reg 2(4). For the meaning of 'fixed-sum credit' see para 85 ante. For the meaning of 'debtor-creditor-supplier agreement' see para 87 ante. For the meaning of 'cash price' see para 146 note 3 ante.
- 18 For the meaning of 'the APR' see para 146 note 15 ante.
- 19 For the meaning of 'credit' see para 83 ante.
- 20 For the meaning of 'running-account credit' see para 84 ante.
- 21 For the meaning of 'credit limit' see para 84 note 6 ante.
- 22 As to the total charge for credit see paras 91 ante, 224 et seq post.
- 23 Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, Sch 1 Pt III para 7.

- 24 Ibid Sch 1 Pt III para 8.
- 25 Ibid Sch 1 Pt III para 9.
- 26 For the meaning of 'advance payment' see para 146 note 3 ante.
- 27 Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, Sch 1 Pt III para 10.
- 28 For the meaning of 'cash purchaser' see para 146 note 3 ante.
- 29 Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, Sch 1 Pt III para 11.
- 30 In the Income and Corporation Taxes Act 1988 ss 369-376 (as amended) (see INCOME TAXATION vol 23(2) (Reissue) para 1045 et seq).
- 31 Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, Sch 1 Pt III para 12(1), (2), (3). The advertisement must not include in relation to any repayment under Sch 1 Pt III para 12 the expression 'weekly equivalent' or any expression to the like effect or any expression of any other periodical equivalent, unless weekly payments or other periodical payments are provided for under the agreement (Sch 1 Pt III para 12(4)); and the amount of any repayment under Sch 1 Pt III para 12 may be expressed as a sum of money or as a specified proportion of a specified amount, including the amount outstanding from time to time (Sch 1 Pt III para 12(5)).
- 32 Ibid Sch 1 Pt III para 13. Heads (13)(a) and (13)(b) in the text do not apply to any charge payable under the transaction to the creditor or any other person on his behalf upon failure by the debtor or a relative of his to do or refrain from doing anything which he is required to do or refrain from doing, as the case may be: Sch 1 Pt III para 13. As to the meaning of 'relative' see para 116 note 12 ante.
- 33 For the meaning of 'consumer credit agreement' see para 81 ante.
- 34 Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, Sch 1 Pt III para 14(1).
- 35 Ibid Schedule 1 Pt III para 14(1) does not apply in the case of an advertisement relating to running-account credit to be provided under a consumer credit agreement where the advertisement does not specify goods, services, land or other things having a particular cash price, the acquisition of which may be financed by the credit: Sch 1 Pt III para 14(3).
- 36 Ibid Sch 1 Pt III para 14(2).
- 37 For the meaning of 'identified dealer' see para 148 note 19 ante.
- 38 Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, Sch 1 Pt III para 15.
- 39 As to sterling see FINANCIAL SERVICES AND INSTITUTIONS.
- 40 Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, Sch 1 Pt III para 16.
- 41 For the meaning of 'full hire advertisement' see para 146 note 12 ante. For the meaning of 'hire advertisement' see para 146 note 9 ante.
- 42 See para 146 note 12 ante.

UPDATE

143-156 Seeking Business

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

146-149 Form and Content of Advertisements

Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, replaced by Consumer Credit (Advertisements) Regulations 2004, SI 2004/1484 (amended by SI 2004/2619, SI 2006/2383, SI 2007/827, SI 2008/1277).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/5. SEEKING BUSINESS/ (1) ADVERTISING/(iii) Offences/150. Offences relating to advertising.

(iii) Offences

150. Offences relating to advertising.

If an advertisement¹ to which these provisions² apply conveys information which in a material respect is false³ or misleading, the advertiser⁴ commits an offence⁵.

If an advertisement to which these provisions⁶ apply indicates that the advertiser is willing to provide credit⁷ under a restricted-use credit agreement⁸ relating to goods⁹ or services to be supplied by any person, but at the time when the advertisement is published that person is not holding himself out as prepared to sell the goods or provide the services, as the case may be, for cash, the advertiser commits an offence¹⁰.

Infringement of the regulations¹¹ governing advertisements is also a criminal offence¹².

Where an advertiser commits an offence¹³, or would be taken to commit an offence but for the statutory defence¹⁴, a like offence¹⁵ is committed by (1) the publisher of the advertisement¹⁶; (2) any person who, in the course of a business carried on by him, devised the advertisement or a part of it relevant to the first-mentioned offence¹⁷; and (3) where the advertiser did not procure the publication of the advertisement, the person who did procure it¹⁸.

1 For the meaning of 'advertisement' see para 144 text and note 7 ante.

2 Ie the Consumer Credit Act 1974 Pt IV (ss 43-54) (as amended).

3 Information stating or implying an intention on the advertiser's part which he has not got is false: *ibid* s 46(2).

4 For the meaning of 'advertiser' see para 144 text and note 8 ante.

5 Consumer Credit Act 1974 s 46(1). As to false or misleading advertisements see *Metsaja v H Norman Pitt & Co Ltd* [1990] CCLR 12, [1989] Crim LR 560. See also *Home Insulation v Wadsley* [1988] CCLR 25, 153 JP 92, DC. It seems that the Consumer Credit Act 1974 s 46 is not confined to misleading statements as to credit in advertisements: see eg *Rover Group Ltd v Sumner* [1995] CCLR 1 (where the quoted price did not include road tax, number plates or delivery charge). See also *Primback Ltd v Customs and Excise Comrs* [1996] CCLR 81 (VAT).

An offence under the Consumer Credit Act 1974 s 46(1) is punishable on summary conviction by a fine not exceeding the prescribed sum, and on conviction on indictment by a maximum of two years' imprisonment or a fine or both: s 167(1), Sch 1 (amended by the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see para 120 note 15 ante. As to offences and enforcement under the Consumer Credit Act 1974 see further para 298 et seq post. As to offences by bodies corporate see s 169; and para 300 post. As to bodies corporate see COMPANIES; CORPORATIONS.

6 See note 2 supra.

7 As to indicating that an advertiser is willing to provide credit see *Jenkins v Lombard North Central plc* [1984] 1 All ER 828, [1984] 1 WLR 307; and para 144 note 5 ante. For the meaning of 'credit' see para 83 ante.

8 For the meaning of 'restricted-use credit agreement' see para 86 ante.

9 For the meaning of 'goods' see para 82 note 5 ante.

10 Consumer Credit Act 1974 s 45. Such an offence is punishable on summary conviction by a fine not exceeding the prescribed sum, and on conviction on indictment by a maximum of two years' imprisonment or a fine or both: Sch 1 (as amended: see note 5 supra).

11 le the Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125: see para 145 et seq ante. For the meaning of 'regulations' see para 114 note 2 ante. As to the power to make regulations generally see para 114 ante.

12 See the Consumer Credit Act 1974 s 167(2); and para 145 ante.

13 le an offence against regulations made under ibid s 44 (see note 11 supra; and para 145 et seq ante) or against s 45 or s 46: see s 47(1).

14 le the defence provided by ibid s 168 (see para 299 post): see s 47(1).

15 Such an offence is punishable on summary conviction by a fine not exceeding the prescribed sum, and on conviction on indictment by a maximum of two years' imprisonment or a fine or both: ibid Sch 1 (as amended: see note 5 supra).

16 Ibid s 47(1)(a). In proceedings for an offence under s 47(1)(a) it is a defence for the person charged to prove that (1) the advertisement was published in the course of a business carried on by him; and (2) he received the advertisement in the course of that business, and did not know and had no reason to suspect that its publication would be an offence under the Consumer Credit Act 1974 Pt IV (as amended): s 47(2). For the meaning of 'business' see para 81 note 7 ante.

The statutory defence under s 168 (see para 299 post) is available to both the advertiser and the publisher.

17 Ibid s 47(1)(b).

18 Ibid s 47(1)(c).

UPDATE

143-156 Seeking Business

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

150 Offences relating to advertising

TEXT AND NOTES 1-5--Consumer Credit Act 1974 s 46 repealed: SI 2008/1277.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/5. SEEKING BUSINESS/(2) CANVASSING/151. Canvassing off trade premises.

(2) CANVASSING

151. Canvassing off trade premises.

An individual¹, known as the 'canvasser', canvasses a regulated agreement² off trade premises if he solicits the entry as debtor³ or hirer⁴ of another individual, known as the 'consumer', into the agreement by making oral representations⁵ to the consumer, or any other individual, during a visit⁶ by the canvasser to any place (other than certain places of business⁷) where the consumer, or that other individual, is⁸. To fall within the definition, the visit must be carried out for the purpose of making such oral representations to individuals who are at that place, but not carried out in response to a request made on a previous occasion⁹.

- 1 For the meaning of 'individual' see para 80 note 1 ante.
- 2 For the meaning of 'regulated agreement' see para 79 ante.
- 3 For the meaning of 'debtor' see para 81 note 3 ante.
- 4 For the meaning of 'hirer' see para 82 note 3 ante.
- 5 For the meaning of 'representation' see para 112 note 2 ante.
- 6 See the text and note 9 infra.
- 7 A place is excluded from the Consumer Credit Act 1974 s 48(1) if it is a place where a business is carried on, whether on a permanent or temporary basis, by (1) the creditor or owner; or (2) a supplier; or (3) the canvasser, or the person whose employee or agent the canvasser is; or (4) the consumer: s 48(2). For the meaning of 'business' see para 81 note 7 ante. For the meaning of 'creditor' see para 81 note 2 ante; and for the meaning of 'owner' see para 82 note 1 ante. For the meaning of 'supplier' see para 86 note 8 ante.
- 8 See ibid ss 48(1), 189(1).
- 9 Ibid s 48(1)(a), (b).

UPDATE

143-156 Seeking Business

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/5. SEEKING BUSINESS/(2) CANVASSING/152. Offences relating to canvassing off trade premises.

152. Offences relating to canvassing off trade premises.

It is an offence to canvass debtor-creditor agreements¹ off trade premises². It is also an offence to solicit the entry of an individual³ as debtor⁴ into a debtor-creditor agreement during a visit carried out in response to a request made on a previous occasion where (1) the request was not in writing signed by or on behalf of the person making it; and (2) the soliciting would have constituted the canvassing of a debtor-creditor agreement off trade premises if no request for the visit had been made⁵.

These provisions⁶ do not apply to any soliciting for an agreement enabling the debtor to overdraw on a current account of any description kept with the creditor⁷ where (a) the Director General of Fair Trading⁸ has determined that current accounts of that description kept with the creditor are excluded from them⁹; and (b) the debtor already keeps an account with the creditor, whether a current account or not¹⁰.

1 For the meaning of 'debtor-creditor agreement' see para 87 ante.

2 Consumer Credit Act 1974 s 49(1). Such an offence is punishable on summary conviction by a fine not exceeding the prescribed sum, and on conviction on indictment by a maximum of one years' imprisonment or a fine or both: s 167(1), Sch 1 (amended by the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see para 120 note 15 ante. As to offences and enforcement under the Consumer Credit Act 1974 see further para 298 et seq post. As to canvassing off trade premises see para 151 ante.

3 For the meaning of 'individual' see para 80 note 1 ante.

4 For the meaning of 'debtor' see para 81 note 3 ante.

5 Consumer Credit Act 1974 s 49(2). Such an offence is punishable on summary conviction by a fine not exceeding the prescribed sum, and on conviction on indictment by a maximum of one years' imprisonment or a fine or both: Sch 1 (as amended: see note 2 supra). As to offences under s 49(2) see also *R v Chaddha* [1984] CCLR 1.

6 Ie the Consumer Credit Act 1974 s 49(1), (2): see s 49(3).

7 For the meaning of 'creditor' see para 81 note 2 ante.

8 As to the Director General of Fair Trading see para 110 ante.

9 Consumer Credit Act 1974 s 49(3)(a). A determination under s 49(3)(a) may be made subject to such conditions as the director thinks fit (s 49(4)(a)); and may be made only where the director is of opinion that it is not against the interests of debtors (s 49(4)(b)). If soliciting is done in breach of a condition imposed under s 49(4)(a), the determination under s 49(3)(a) does not apply to it: s 49(5). As to the determination made see the Determination dated 1 June 1977.

10 Consumer Credit Act 1974 s 49(3)(b).

UPDATE

143-156 Seeking Business

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory

Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

152 Offences relating to canvassing off trade premises

TEXT AND NOTES--Consumer Credit Act 1974 s 49 amended: Enterprise Act 2002 Sch 25 para 6(22).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/5. SEEKING BUSINESS/(2) CANVASSING/153. Prohibition of circulars to minors.

153. Prohibition of circulars to minors.

A person who, with a view to financial gain¹, sends to a minor any document inviting him to (1) borrow money²; or (2) obtain goods on credit or hire³; or (3) obtain services on credit⁴; or (4) apply for information or advice on borrowing money or otherwise obtaining credit or hiring goods⁵, commits an offence⁶.

1 It has been held that a document unintentionally sent to a minor inviting applications for a loan was not sent with a view to financial gain; such a document must be read as a whole; and a statement in the document that loans were unavailable to minors prevented the document from being construed as an invitation to a minor: *Alliance and Leicester Building Society v Babbs* [1993] CCLR 77, 157 JP 706, DC.

2 Consumer Credit Act 1974 s 50(1)(a). See also *Alliance and Leicester Building Society v Babbs* [1993] CCLR 77, 157 JP 706, DC.

3 Consumer Credit Act 1974 s 50(1)(b). For the meaning of 'goods' see para 82 note 5 ante. For the meaning of 'credit' see para 83 ante.

4 Ibid s 50(1)(c).

5 Ibid s 50(1)(d).

6 See ibid s 50(1). See also *Alliance and Leicester Building Society v Babbs* [1993] CCLR 77, 157 JP 706, DC. An offence under the Consumer Credit Act 1974 is punishable on summary conviction by a fine not exceeding the prescribed sum, and on conviction on indictment by a maximum of one years' imprisonment or a fine or both: s 167(1), Sch 1 (amended by the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see para 120 note 15 ante. As to offences and enforcement under the Consumer Credit Act 1974 see further para 298 et seq post.

In proceedings under s 50(1) in respect of the sending of a document to a minor, it is a defence for the person charged to prove that he did not know, and had no reasonable cause to suspect, that he was a minor: s 50(2). See also *Tesco Stores Ltd v Brent London Borough Council* [1993] 2 All ER 718, [1993] 1 WLR 1037, DC (case concerning the supply of a video recording to a person under 18). Where a document is received by a minor at any school or other educational establishment for minors, a person sending it to him at that establishment knowing or suspecting it to be such an establishment must be taken to have reasonable cause to suspect that he is a minor: Consumer Credit Act 1974 s 50(3).

UPDATE

143-156 Seeking Business

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/5. SEEKING BUSINESS/(2) CANVASSING/154. Prohibition of unsolicited credit-tokens.

154. Prohibition of unsolicited credit-tokens.

It is an offence to give a person a credit-token¹ if he has not asked² for it³. However, this does not apply to the giving of a credit-token to a person (1) for use under a credit-token agreement already made⁴; or (2) in renewal or replacement of a credit-token previously accepted by him under a credit-token agreement which continues in force, whether or not varied⁵.

1 For the meaning of 'credit-token' see para 88 ante.

2 To comply with the Consumer Credit Act s 51(1), a request must be contained in a document signed by the person making the request, unless the credit-token agreement is a small debtor-creditor-supplier agreement: s 51(2). For the meaning of 'credit-token agreement' see para 88 ante. For the meaning of 'debtor-creditor-supplier agreement' see para 87 ante. For the meaning of 'small agreement' see para 108 ante.

3 Ibid s 51(1). See also *Elliott v Director General of Fair Trading* [1980] 1 WLR 977, [1980] ICR 629, DC.

An offence under the Consumer Credit Act 1974 s 51(1) is punishable on summary conviction by a fine not exceeding the prescribed sum, and on conviction on indictment by a maximum of two years' imprisonment or a fine or both: s 167(1), Sch 1 (amended by the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see para 120 note 15 ante. As to offences and enforcement under the Consumer Credit Act 1974 see further para 298 et seq post.

4 Ibid s 51(3)(a).

5 Ibid s 51(3)(b).

UPDATE

143-156 Seeking Business

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/5. SEEKING BUSINESS/(3) QUOTATIONS/155. Power to make regulations.

(3) QUOTATIONS

155. Power to make regulations.

Regulations¹ may be made (1) as to the form and content of any document, known as a 'quotation', by which a person who carries on a consumer credit business² or consumer hire business³, or a business⁴ in the course of which he provides credit⁵ to individuals⁶ secured on land⁷, gives prospective customers information about the terms on which he is prepared to do business⁸; (2) requiring a person carrying on such a business to provide quotations to such persons and in such circumstances as are prescribed⁹.

A person who contravenes any regulations made under these provisions commits an offence¹⁰.

Regulations were made but have been revoked¹¹, and at the date at which this volume states the law no further regulations are anticipated.

1 For the meaning of 'regulations' see para 114 note 2 ante. As to the power to make regulations generally see para 114 ante. The Consumer Credit (Quotations) Regulations 1989, SI 1989/1126, which were made under the Consumer Credit Act 1974 s 52, have been revoked but not replaced: see the Consumer Credit (Quotations) (Revocation) Regulations 1997, SI 1997/211, reg 1. At the date at which this volume states the law no further regulations have been made.

2 For the meaning of 'consumer credit business' see para 81 ante.

3 For the meaning of 'consumer hire business' see para 82 ante.

4 For the meaning of 'business' see para 81 note 7 ante.

5 For the meaning of 'credit' see para 83 ante.

6 For the meaning of 'individual' see para 80 note 1 ante.

7 For the meaning of 'land' see para 93 note 2 ante.

8 Consumer Credit Act 1974 ss 52(1)(a), 189(1). Regulations under s 52(1)(a) may in particular contain provisions relating to quotations such as are set out in relation to advertisements in s 44 (see para 145 ante): s 52(2).

9 Ibid s 52(1)(b). For the meaning of 'prescribed' see para 114 note 8 ante.

10 Ibid s 167(2). Such an offence is punishable on summary conviction by a fine not exceeding the prescribed sum, and on conviction on indictment by a maximum of two years' imprisonment or a fine or both: s 167(1), Sch 1 (amended by the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see para 120 note 15 ante. As to offences and enforcement under the Consumer Credit Act 1974 see further para 298 et seq post.

11 See note 1 supra.

UPDATE

143-156 Seeking Business

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements

mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

155 Power to make regulations

TEXT AND NOTES 1-9--See further Consumer Credit Act 1974 s 52(3) (added by the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544).

TEXT AND NOTES 1-8--See the Consumer Credit (Content of Quotations) and Consumer Credit (Advertisements) (Amendment) Regulations 1999, SI 1999/2725 (amended by SI 2000/1797, SI 2001/544, SI 2004/1484), which prescribe the content of quotations (1) for personal credit agreements which would or might be secured on the customer's home (reg 3); (2) for personal credit agreements secured on the debtor's home which (a) do not, while the property secured by the mortgage continues to be the debtor's main residence, require any instalments of the secured sum or any payment of interest on it; and (b) which may require interest payments but do not require full or partial repayment of the secured sum while the mortgaged property is the debtor's main residence, and under which the creditor cannot repossess or sell the property during that period (regs 3A, 3B) (both added by SI 2000/1797); (3) for personal credit agreements which would be secured on land and under which repayments of credit would be made in a currency other than sterling (reg 4); (4) for agreements for the bailment of goods which would or might be secured on the customer's home (reg 5); and (5) provided by credit-brokers (reg 6) (amended by SI 2000/1797).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/5. SEEKING BUSINESS/(4) DISPLAY OF INFORMATION/156. Power to make regulations.

(4) DISPLAY OF INFORMATION

156. Power to make regulations.

Regulations¹ may require a person who carries on a consumer credit business² or consumer hire business³ or a business⁴ in the course of which he provides credit⁵ to individuals⁶ secured on land⁷, to display in the prescribed⁸ manner, at any premises where the business is carried on to which the public have access, prescribed information about the business⁹.

A person who contravenes any regulations made under these provisions commits an offence¹⁰.

There are currently no regulations relating to display of information in force¹¹.

1 For the meaning of 'regulations' see para 114 note 2 ante. As to the power to make regulations generally see para 114 ante. At the date at which this volume states the law no such regulations had been made.

2 For the meaning of 'consumer credit business' see para 81 ante.

3 For the meaning of 'consumer hire business' see para 82 ante.

4 For the meaning of 'business' see para 81 note 7 ante.

5 For the meaning of 'credit' see para 83 ante.

6 For the meaning of 'individual' see para 80 note 1 ante.

7 For the meaning of 'land' see para 93 note 2 ante.

8 For the meaning of 'prescribed' see para 114 note 8 ante.

9 Consumer Credit Act 1974 s 53.

10 Ibid s 167(2). Such an offence is punishable on summary conviction by a fine not exceeding the prescribed sum, and on conviction on indictment by a maximum of two years' imprisonment or a fine or both: s 167(1), Sch 1 (amended by the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see para 120 note 15 ante. As to offences and enforcement under the Consumer Credit Act 1974 see further para 298 et seq post.

11 See note 1 supra.

UPDATE

143-156 Seeking Business

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

156 Power to make regulations

TEXT AND NOTE 9--1974 Act s 53 amended: Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544; Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2006, SI 2006/2383.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(1) IN GENERAL/157. The scheme of the legislation.

6. THE MAKING OF REGULATED AGREEMENTS

(1) IN GENERAL

157. The scheme of the legislation.

Part V of the Consumer Credit Act 1974¹ and the regulations² made under it contain detailed requirements relating to entry into regulated agreements³ and ancillary matters, although certain agreements are excluded from these provisions⁴.

There is a power to make regulations specifying information to be disclosed to the debtor⁵ or hirer⁶ before a regulated agreement is made, but this power has not been exercised⁷. Agreements to enter into prospective agreements are void⁸.

There are detailed provisions as to the form, content and signatures required for regulated agreements⁹; and similarly detailed requirements for the making and delivery of copies¹⁰ of agreements and documents referred to in them¹¹. If these requirements are not complied with, then the agreement is improperly executed and may only be enforced on an order of the court¹².

Where there is a properly executed credit-token agreement¹³ the debtor is still not liable under that agreement unless he has accepted the credit-token¹⁴.

In certain circumstances, an agreement may be a cancellable agreement¹⁵, and there are detailed requirements which must be complied with in respect of such an agreement¹⁶. In addition, there are distinct provisions relating to withdrawal from prospective agreements¹⁷.

There are also provisions relating to agency¹⁸ and to multiple agreements¹⁹, variation and modification of agreements²⁰ and linked transactions²¹.

1 Ie the Consumer Credit Act 1974 Pt V (ss 55-74) (as amended): see para 158 et seq post.

2 For the meaning of 'regulations' see para 114 note 2 ante. As to the power to make regulations see para 114 ante. As to the regulations made see in particular the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553 (as amended); and para 162 et seq post.

3 For the meaning of 'regulated agreement' see para 79 ante.

4 As to the agreements excluded from the Consumer Credit Act 1974 Pt V (as amended) see s 74 (as amended); and para 179 post.

5 For the meaning of 'debtor' see para 81 note 3 ante.

6 For the meaning of 'hirer' see para 82 note 3 ante.

7 See the Consumer Credit Act 1974 s 55; and para 158 post.

8 See ibid s 59; and para 159 post.

9 See ibid ss 60, 61; the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553 (as amended); and para 161 et seq post.

10 As to the meaning of 'copy' see para 174 text and note 4 post.

- 11 See the Consumer Credit Act 1974 ss 62, 63; the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557 (as amended); and para 171 et seq post.
- 12 See the Consumer Credit Act 1974 s 65; and para 169 post. For the meaning of 'court' see para 134 note 9 ante. As to enforcement see s 127; and paras 169, 290 post.
- 13 For the meaning of 'credit-token agreement' see para 88 ante.
- 14 See the Consumer Credit Act 1974 s 66; and para 170 post. For the meaning of 'credit-token' see para 88 ante. As to what constitutes acceptance see para 170 note 4 post.
- 15 For the meaning of 'cancellable agreement' see para 183 note 1 post.
- 16 See the Consumer Credit Act 1974 s 67; and para 184 et seq post.
- 17 See *ibid* ss 57, 58; and paras 181-182 post.
- 18 See *ibid* s 56; and para 177 post.
- 19 See *ibid* s 18; and para 190 post.
- 20 See *ibid* s 82; and para 191 et seq post. See also para 243 post.
- 21 See *ibid* s 19; and para 196 et seq post.

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(2) PRELIMINARY MATTERS/158. Disclosure before regulated agreement.

(2) PRELIMINARY MATTERS

158. Disclosure before regulated agreement.

Regulations¹ may require specified information to be disclosed in the prescribed² manner to the debtor³ or hirer⁴ before a regulated agreement⁵ is made⁶. A regulated agreement is not properly executed unless any such regulations were complied with before the making of the agreement⁷. However, no regulations have as yet been made⁸.

- 1 For the meaning of 'regulations' see para 114 note 2 ante.
- 2 For the meaning of 'prescribed' see para 114 note 8 ante.
- 3 For the meaning of 'debtor' see para 81 note 3 ante.
- 4 For the meaning of 'hirer' see para 82 note 3 ante.
- 5 For the meaning of 'regulated agreement' see para 79 ante.
- 6 Consumer Credit Act 1974 s 55(1). At the date at which this volume states the law no such regulations had been made.
- 7 Ibid s 55(2).
- 8 See note 6 supra.

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

158 Disclosure before regulated agreement

NOTE 6--In exercise of the power under the 1974 Act s 55(1) the Secretary of State has made the Consumer Credit (Disclosure of Information) Regulations 2004, SI 2004/1481.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(2) PRELIMINARY MATTERS/159. Agreement to enter into prospective regulated agreement.

159. Agreement to enter into prospective regulated agreement.

An agreement is void if, and to the extent that, it purports to bind a person to enter as debtor¹ or hirer² into a prospective regulated agreement³. Regulations⁴ may, however, exclude from the operation of this provision agreements such as are described in the regulations⁵.

Agreements which are excluded, and which are therefore enforceable, are agreements in writing to enter into the following prospective regulated agreements⁶:

- 48 (1) prospective consumer hire agreements⁷ for the bailment⁸ to the hirer of goods⁹, where the goods are required by the hirer for the purposes of a business¹⁰ carried on by him or the hirer holds himself out as requiring the goods for those purposes¹¹;
- 49 (2) prospective restricted-use credit agreements¹² for fixed-sum credit¹³ to finance¹⁴ the purchase of goods, where the goods are required by the debtor for the purposes of a business carried on by him or the debtor holds himself out as requiring the goods for those purposes¹⁵,

where the agreement to enter into the prospective regulated agreement embodies, at the time it is signed by the debtor or hirer, such information¹⁶ relating to the prospective agreement as is required to be contained in a quotation¹⁷; and either (a) is not preceded by antecedent negotiations¹⁸ which included oral representations made when in the presence of the debtor or hirer by an individual¹⁹ acting as, or on behalf of, the negotiator²⁰; or (b) is signed by the debtor or hirer at premises at which any of the following is carrying on any business, whether on a permanent or temporary basis:

- 50 (i) the creditor or owner²¹;
- 51 (ii) any party to a linked transaction²² to the prospective agreement, other than the debtor or hirer or a relative of his²³; or
- 52 (iii) the negotiator in any antecedent negotiations²⁴.

1 For the meaning of 'debtor' see para 81 note 3 ante.

2 For the meaning of 'hirer' see para 82 note 3 ante.

3 Consumer Credit Act 1974 s 59(1). For the meaning of 'regulated agreement' see para 79 ante. As to withdrawal from prospective agreements see paras 181-182 post.

4 For the meaning of 'regulations' see para 114 note 2 ante. As to the power of the Secretary of State to make regulations see para 114 ante. As to the Secretary of State see para 113 ante.

5 Consumer Credit Act 1974 s 59(2). Under this provision the Secretary of State has made the Consumer Credit (Agreements to enter Prospective Agreements) (Exemptions) Regulations 1983, SI 1983/1552, which came into operation on 19 May 1985: see reg 1(1).

6 See ibid reg 2(1), (2).

7 For the meaning of 'consumer hire agreement' see para 82 ante.

8 As to bailment see BAILMENT.

- 9 For the meaning of 'goods' see para 82 note 5 ante.
- 10 For the meaning of 'business' see para 81 note 7 ante.
- 11 Consumer Credit (Agreements to enter Prospective Agreements) (Exemptions) Regulations 1983, SI 1983/1552, reg 2(2)(a).
- 12 For the meaning of 'restricted-use credit agreement' see para 86 ante.
- 13 For the meaning of 'fixed-sum credit' see para 85 ante.
- 14 For the meaning of 'finance' see para 83 note 8 ante.
- 15 Consumer Credit (Agreements to enter Prospective Agreements) (Exemptions) Regulations 1983, SI 1983/1552, reg 2(2)(b).
- 16 The information must be presented clearly and together as a whole: see *ibid* reg 2(2).
- 17 See *ibid* reg 2(2). There are currently no regulations requiring information to be contained in a quotation: see para 155 ante.
- 18 For the meaning of 'antecedent negotiations' see para 177 ante.
- 19 For the meaning of 'individual' see para 80 note 1 ante.
- 20 Consumer Credit (Agreements to enter Prospective Agreements) (Exemptions) Regulations 1983, SI 1983/1552, reg 2(2)(i). For the meaning of 'negotiator' see para 177 post.
- 21 *Ibid* reg 2(2)(ii)(aa). For the meaning of 'creditor' see para 81 note 2 ante; and for the meaning of 'owner' see para 82 note 1 ante.
- 22 As to linked transactions see paras 196-198 post.
- 23 Consumer Credit (Agreements to enter Prospective Agreements) (Exemptions) Regulations 1983, SI 1983/1552, reg 2(2)(ii)(bb). For the meaning of 'relative' see para 116 note 12 ante.
- 24 *Ibid* reg 2(2)(ii)(cc).

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(3) FORM, CONTENT AND SIGNING OF REGULATED AGREEMENTS/160. Execution of regulated agreements.

(3) FORM, CONTENT AND SIGNING OF REGULATED AGREEMENTS

160. Execution of regulated agreements.

A regulated agreement¹ is not properly executed unless (1) a document in the prescribed form² itself containing all the prescribed terms³ and conforming to regulations⁴ is signed in the prescribed manner both by the debtor⁵ or hirer⁶ and by or on behalf of the creditor⁷ or owner⁸; and (2) the document embodies⁹ all the terms of the agreement, other than implied terms¹⁰; and (3) the document is, when presented or sent to the debtor or hirer for signature, in such a state that all its terms are readily legible¹¹.

In addition, where the agreement is one which is to be secured on land and from which there is an opportunity to withdraw¹², it is not properly executed unless (a) certain requirements¹³ were complied with¹⁴; and (b) the unexecuted agreement was sent, for his signature, to the debtor or hirer by post not less than seven days after a copy of it was given to him¹⁵; and (c) during the consideration period¹⁶, the creditor or owner refrained from approaching the debtor or hirer¹⁷ except in response to a specific request made by the debtor or hirer after the beginning of the consideration period¹⁸; and (d) no notice of withdrawal by the debtor or hirer was received by the creditor or owner before the sending of the unexecuted agreement¹⁹.

1 For the meaning of 'regulated agreement' see para 79 ante.

2 As to the prescribed form see para 161 et seq post. For the meaning of 'prescribed' see para 114 note 8 ante.

3 As to the prescribed terms see paras 167-168 post.

4 Ie regulations under the Consumer Credit Act 1974 s 60(1): see s 61(1)(a). As to the power to make regulations see para 114 ante. For the meaning of 'regulations' see para 114 note 2 ante. As to the regulations made see the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553 (as amended); and para 161 et seq post.

5 For the meaning of 'debtor' see para 81 note 3 ante. See note 6 infra.

6 For the meaning of 'hirer' see para 82 note 3 ante. Where the debtor or hirer is a partnership or an unincorporated body of persons, the Consumer Credit Act 1974 s 61(1)(a) applies with the substitution for 'by the debtor or hirer' of 'by or on behalf of the debtor or hirer': s 61(4).

7 For the meaning of 'creditor' see para 81 note 2 ante.

8 Consumer Credit Act 1974 s 61(1)(a). For the meaning of 'owner' see para 82 note 1 ante.

9 As to the meaning of 'embodies' see para 115 note 2 ante.

10 Consumer Credit Act 1974 s 61(1)(b).

11 Ibid s 61(1)(c). As to incomplete agreements see *PB Leasing Ltd v Patel and Patel (t/a Plankhouse Stores)* [1995] CCLR 82.

12 Ie an agreement to which the Consumer Credit Act 1974 s 58(1) applies (see para 182 post): see s 61(2).

13 Ie the requirements of ibid s 58(1): see s 61(2)(a).

14 Ibid s 61(2)(a).

15 le under *ibid* s 58(1): s 61(2)(b).

16 'The consideration period' means the period beginning with the giving of the copy under *ibid* s 58(1) (see para 182 post) and ending (1) at the expiry of seven days after the day on which the unexecuted agreement is sent, for his signature, to the debtor or hirer; or (2) on its return by the debtor or hirer after signature by him, whichever first occurs: s 61(3).

17 le whether in person, by telephone or letter, or in any other way: see *ibid* s 61(2)(c).

18 *Ibid* s 61(2)(c).

19 *Ibid* s 61(2)(d).

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

160 Execution of regulated agreements

TEXT AND NOTE 15--1974 Act s 61(2)(b) amended: Consumer Credit Act 1974 (Electronic Communications) Order 2004, SI 2004/3236. See also the 1974 Act s 176A (electronic transmission of documents) (added by SI 2004/3236).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(3) FORM, CONTENT AND SIGNING OF REGULATED AGREEMENTS/161. Requirements as to form and content of regulated agreements.

161. Requirements as to form and content of regulated agreements.

The Secretary of State¹ must make regulations² as to the form and content of documents embodying regulated agreements, and the regulations must contain such provisions as appear to him appropriate with a view to ensuring that the debtor or hirer is made aware of:

- 53 (1) the rights and duties conferred or imposed on him by the agreement³;
- 54 (2) the amount and rate of the total charge for credit⁴, in the case of a consumer credit agreement⁵;
- 55 (3) the protection and remedies available to him under the Consumer Credit Act 1974⁶; and
- 56 (4) any other matters which, in the opinion of the Secretary of State, it is desirable for him to know about in connection with the agreement⁷.

Regulations may in particular (a) require specified information to be included in the prescribed⁸ manner in documents, and other specified material to be excluded⁹; (b) contain requirements to ensure that specified information is clearly brought to the attention of the debtor or hirer, and that one part of a document is not given insufficient or excessive prominence compared with another¹⁰. Regulations must include provision requiring documents embodying regulated agreements also to embody any security provided in relation to a regulated agreement by the debtor or hirer¹¹.

A regulated agreement is not properly executed unless it is in the prescribed form¹², contains the prescribed terms¹³ and conforms to the requirements of the regulations¹⁴.

If, on an application made to the Director General of Fair Trading¹⁵ by a person carrying on a consumer credit business¹⁶ or a consumer hire business¹⁷, it appears to the director impracticable for the applicant to comply with any requirement of the regulations in a particular case, he may, by notice¹⁸ to the applicant, direct that the requirement be waived or varied in relation to such agreements, and subject to such conditions, if any, as he may specify¹⁹.

1 As to the Secretary of State see para 113 ante.

2 For the meaning of 'regulations' see para 114 note 2 ante. As to the power of the Secretary of State to make regulations see para 114 ante. As to the regulations made see the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553 (as amended); and para 162 et seq post.

The Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, regs 1, 2, 3, 5, 6, 7 apply to regulated agreements, and modifying agreements treated under the Consumer Credit Act 1974 s 82(3) (see para 191 post) as regulated agreements, made on or after 19 May 1985: Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 8(1). However, in the case of a modifying agreement of a type specified in reg 7(2), (9), Sch 8 Pt I paras 3-19, Pt II paras 3-8 (see paras 192-194 post) made on or after 19 May 1985 which varies or supplements an earlier credit agreement or an earlier hire agreement made before that date, nothing in the regulations requires the information about financial and related particulars specified in those paragraphs to be contained in any document embodying the modifying agreement if no term of the earlier agreement relating to such financial and related particulars has been varied or supplemented by the modifying agreement: reg 8(2).

Nothing in the regulations applies to a regulated agreement which purports to bind a person to enter as debtor or hirer into a prospective regulated agreement and which is excluded from the operation of the Consumer Credit Act 1974 s 59(1) (see para 159 ante) by the Consumer Credit (Agreements to enter Prospective Agreements) (Exemptions) Regulations 1983, SI 1983/1552 (see para 159 ante): Consumer Credit (Agreements

Regulations 1983, SI 1983/1553, reg 8(3). For the meaning of 'regulated agreement' see para 79 ante. As to the meaning of 'modifying agreement' see para 191 post. 'Earlier credit agreement' means an earlier agreement for the provision of credit: reg 1(2). 'Earlier hire agreement' means an earlier agreement for the bailment or the hiring of goods: reg 1(2). As to the meaning of 'embodies' and related words see para 115 note 2 ante. For the meaning of 'debtor' see para 81 note 3 ante. For the meaning of 'hirer' see para 82 note 3 ante.

- 3 Consumer Credit Act 1974 s 60(1)(a).
- 4 As to the total charge for credit see paras 91 ante, 224 et seq post.
- 5 Consumer Credit Act 1974 s 60(1)(b). For the meaning of 'consumer credit agreement' see para 81 ante.
- 6 Ibid s 60(1)(c).
- 7 Ibid s 60(1)(d).
- 8 For the meaning of 'prescribed' see para 114 note 8 ante.
- 9 Consumer Credit Act 1974 s 60(2)(a).
- 10 Ibid s 60(2)(b).
- 11 Ibid s 105(9). For the meaning of 'security' see para 200 note 1 post.
- 12 See para 162 et seq post.
- 13 As to the prescribed terms see para 167-168 post.
- 14 See the Consumer Credit Act 1974 s 61(1); and para 160 ante.
- 15 As to the Director General of Fair Trading see para 110 ante.
- 16 For the meaning of 'consumer credit business' see para 81 ante.
- 17 For the meaning of 'consumer hire business' see para 82 ante.
- 18 For the meaning of 'notice' see para 128 note 3 ante. The director must give a notice under the Consumer Credit Act 1974 s 60(3) only if he is satisfied that to do so would not prejudice the interests of debtors or hirers: s 60(4).
- 19 Ibid s 60(3). The Consumer Credit Act 1974 and the regulations have effect accordingly: see s 60(3).

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

161 Requirements as to form and content of regulated agreements

TEXT AND NOTES 18, 19--Consumer Credit Act 1974 s 60(3), (4) amended: Enterprise Act 2002 Sch 25 para 6(23).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(3) FORM, CONTENT AND SIGNING OF REGULATED AGREEMENTS/162. Form and content of regulated consumer credit agreements.

162. Form and content of regulated consumer credit agreements.

Documents embodying regulated consumer credit agreements¹, other than modifying agreements², must contain the information set out in the Consumer Credit (Agreements) Regulations 1983³.

Where certain financial information⁴ cannot be exactly ascertained by the creditor⁵, estimated information based on such assumptions as the creditor may reasonably make in all the circumstances of the case and an indication of the assumptions made must be included in documents embodying regulated consumer credit agreements⁶.

Documents embodying regulated consumer credit agreements⁷ must contain statements of the protection and remedies available to debtors⁸ under the Consumer Credit Act 1974⁹; and such documents must also contain a signature box in the specified form¹⁰.

Information about financial and related particulars¹¹ and also certain statements of the protection and remedies available to debtors under the Consumer Credit Act 1974¹² must be shown together as a whole in documents embodying regulated consumer credit agreements and not interspersed with other information apart from sub-totals of total amounts and cross-references to terms of the agreement¹³. However, the statements of protection and remedies need not be shown together as a whole with the information about financial and related particulars if a reference to those statements is shown together with that information¹⁴.

Certain documents¹⁵ may contain instead of the headings, statements of protection and remedies available to debtors under the Consumer Credit Act 1974 and signature boxes that would otherwise apply (1) a heading and signature box in so far as they relate to the principal agreement; (2) a statement in the specified form¹⁶; and (3) other statements¹⁷ of the protection and remedies available to debtors under the Consumer Credit Act 1974 in so far as they relate to the principal agreement¹⁸.

Documents embodying regulated consumer credit agreements must embody¹⁹ any security provided in relation to the regulated agreement by the debtor²⁰.

1 For the meaning of 'consumer credit agreement' see para 81 ante. For the meaning of 'regulated' see para 79 ante. As to the meaning of 'embodying' see para 115 note 2 ante.

2 As to the meaning of 'modifying agreement' see para 191 post. As to the form and content of modifying agreements see paras 192-194 post.

3 In the information set out in the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 2(1) (as amended), Sch 1: see reg 2(1) (amended by SI 1984/1600); and para 163 post. As to the power to make such regulations see the Consumer Credit Act 1974 s 60; and para 161 ante. As to the power to make regulations generally see para 114 ante.

As to the additional information required for credit-token agreements see the Consumer Credit (Credit-Token Agreements) (Regulations 1983, SI 1983/1555; and para 247 note 11 post. For the meaning of 'credit-token agreement' see para 88 ante.

4 In any information about financial and related particulars set out in the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 1 paras 9-11: see reg 2(2).

5 For the meaning of 'creditor' see para 81 note 2 ante.

6 Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 2(2).

7 le other than agreements of the description specified in the Consumer Credit (Notices of Cancellation Rights) (Exemptions) Regulations 1983, SI 1983/1558 (see para 183 note 6 post) in relation to which there are no charges forming part of the total charge for credit: see the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 2(3) (amended by SI 1984/1600; SI 1985/666). The total charge for credit must be determined in accordance with the Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51 (see para 224 et seq post) and, in the case of modifying agreements, the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 7, Sch 8 Pt I (see paras 192-193 post): reg 1(2).

8 For the meaning of 'debtor' see para 81 note 3 ante.

9 le statements in the form specified in the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 2(3) (as amended), Sch 2 Pt I Forms 1-15 (Form 2 substituted by SI 1988/2047): see the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 2(3) (as amended: see note 7 supra).

10 le a signature box in the form specified in ibid reg 2(7) (as amended), Sch 5 Pt I Forms 1-8: see reg 2(7) (amended by SI 1984/1600; SI 1985/666). If the agreement is one to which the Consumer Credit Act 1974 s 58(1) (see para 182 post) applies, is a cancellable agreement or is an agreement under which a person takes any article in pawn and under which the pawn-receipt is not separate from the document embodying the agreement, the document embodying the agreement must contain a separate box immediately above, below or adjacent to the signature box in which the appropriate statements specified in the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 2 Pt I Forms 1-4 (Form 2 as substituted: see note 9 supra), Pt II Form 16 must be included: reg 2(7) (as so amended). 'Cancellable agreement' includes an agreement which is a modifying agreement treated under the Consumer Credit Act 1974 s 82(5) (see para 191 post) as a cancellable agreement: Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 1(2). For the meaning of 'cancellable agreement' generally see para 183 note 1 post. As to pawn generally see para 208 et seq post; and BAILMENT; PLEDGES AND PAWNS vol 36(1) (2007 Reissue) para 1 et seq.

11 le the information set out in ibid Sch 1 paras 3-19 (see para 163 post): see reg 2(4) (as amended: see note 13 infra).

12 le statements in the form specified in ibid reg 2(3) (as amended), Sch 2 Pt I Forms 5, 7, 9: see reg 2(4) (as amended: see note 13 infra).

13 Ibid reg 2(4) (amended by SI 1984/1600). However, in the case of documents embodying restricted-use debtor-creditor-supplier agreements for fixed-sum credit to finance a transaction comprising the acquisition of goods, services, land or other things specified in the agreement or identified and agreed on at the time the agreement is made and relating to more than one description of goods, services, land or other things, the cash prices, and the total cash price, referred to in the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 1 para 4 (see para 163 post) may be shown in a schedule to such document together with each description of the goods, services, land or other things, provided that the total cash price and a reference to the schedule to such document are shown together with the remaining financial and related particulars specified in Sch 1 paras 5-19 (see para 163 post): reg 2(5). For the meaning of 'restricted-use credit agreement' see para 86 ante. For the meaning of 'debtor-creditor-supplier agreement' see para 87 ante. For the meaning of 'fixed-sum credit' see para 85 ante. For the meaning of 'finance' see para 83 note 8 ante. For the meaning of 'goods' see para 82 note 5 ante. For the meaning of 'land' see para 93 note 2 ante. 'Cash price' in relation to any goods, services, land or other things means the price or charge at which the goods, services, land or other things may be purchased by, or supplied to, the debtor for cash: reg 1(2).

14 Ibid reg 2(4) proviso (as amended: see note 13 supra).

15 le documents embodying a debtor-creditor-supplier agreement falling within the Consumer Credit Act 1974 s 12(a) (see para 87 ante) or a debtor-creditor agreement (in either case referred to for these purposes as 'the principal agreement') and also embodying, or containing the option of, a debtor-creditor-supplier agreement falling within s 12(b) (see para 87 ante) (for these purposes referred to as 'the subsidiary agreement'), where the subsidiary agreement is to finance a premium under either or both of: (1) a contract of insurance to provide a sum payable in the event of one or more of the following: (a) accident; (b) sickness; (c) unemployment; (d) death only, of a debtor before the credit under the principal agreement and the subsidiary agreement has been repaid, where the sum payable does not exceed the amount sufficient to defray the sums payable to the creditor in respect of that credit and of the total charge for credit and where the policy monies payable under the contract of insurance are to be used for a repayment under the principal agreement and the subsidiary agreement; (2) any other contract in so far as it relates to a guarantee of goods: see the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 2(7A)(a), (b) (as added: see note 18 infra). For the meaning of 'debtor-creditor agreement' see para 87 ante. 'Contract of insurance' has the same meaning as it has in the Insurance Companies Act 1982 (see INSURANCE): Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 1(2) (definition added by SI 1984/1600). In the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553 (as amended), any reference to a repayment is a reference to (i) a repayment of the whole or any part of the credit; (ii) a payment of the whole or any part of the total charge for credit; or (iii) a

combination of such repayments and payments: reg 1(3). 'Guarantee of goods' means anything in writing which contains or purports to contain some promise or assurance, however worded or presented, that defects in goods will be made good by complete or partial replacement, or by repair, monetary compensation or otherwise: reg 1(2) (definition added by SI 1984/1600).

16 le a statement in the form specified in the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 2 Pt I Form 12: see reg 2(7A) (as added: see note 18 infra).

17 le other than in the form specified in ibid Sch 2 Pt I Form 14: see reg 2(7A) (as added: see note 18 infra).

18 Ibid reg 2(7A) (added by SI 1984/1600).

19 le either in the document itself or in another document referred to in it: see the Consumer Credit Act 1974 s 189(4); and para 115 note 2 ante.

20 Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 2(8).

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

162 Form and content of regulated consumer credit agreements

TEXT AND NOTES--SI 1983/1553 reg 2, Sch 2 substituted: SI 2004/1482 (amended by SI 2004/2619). As to the form to be used in relation to agreements under which a separate form of consent is required see SI 1983/1553 Sch 5 Pt III Form 1 (added by SI 2004/1482).

NOTE 15--Definition of 'contract of insurance' in SI 1983/1553 reg 1(2) revoked: SI 2001/3649. References in SI 1983/1553 to contracts of insurance must be read with (1) the Financial Services and Markets Act 2000 s 22; (2) any relevant order under s 22; and (3) Sch 2: SI 1983/1553 reg 1(2A) (added by SI 2001/3649). See further FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 84.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(3) FORM, CONTENT AND SIGNING OF REGULATED AGREEMENTS/163. Detailed information to be contained in consumer credit agreements.

163. Detailed information to be contained in consumer credit agreements.

All types of regulated consumer credit agreement¹ must contain a heading in one of the following forms of words, as the case may require, shown prominently on the first page of the document:

- 57 (1) 'Hire-Purchase Agreement regulated by the Consumer Credit Act 1974'²;
- 58 (2) 'Conditional Sale Agreement regulated by the Consumer Credit Act 1974'³; or
- 59 (3) 'Credit Agreement regulated by the Consumer Credit Act 1974'⁴.

All types of agreement must also contain the name and a postal address of the creditor⁵ and the name and a postal address of the debtor⁶.

Restricted-use debtor-creditor-supplier agreements⁷ for fixed-sum credit⁸ to finance⁹ a transaction comprising the acquisition of goods¹⁰, services, land¹¹ or other things specified in the agreement, or identified and agreed on at the time the agreement is made, must contain a list or other description of the goods, services or other things and, in the case of land, a general description of the land, the acquisition of which is to be financed by credit under the agreement¹². Such agreements must also contain the cash price¹³ in relation to each list or other description of goods, services, land or other things, and the total cash price¹⁴. Certain of these agreements¹⁵, must contain the amount of the credit to be provided under the agreement, namely the difference between the total cash price¹⁶ and the total of any advance payments¹⁷.

All types of agreement, in relation to which any advance payment is to be made by the debtor¹⁸ before he is provided with credit under the agreement or, as the case may be, before he enters into the agreement, must contain the amount of the advance payments to be made by the debtor and, in the case of a cancellable agreement¹⁹, the nature of such payments²⁰.

Certain agreements for fixed-sum credit²¹ must contain the amount of the credit to be provided under the agreement²².

Agreements for running-account credit²³ must contain the credit limit, which may be expressed in one of several prescribed ways²⁴.

Subject to certain exceptions agreements for fixed-sum credit²⁵ must contain the total charge for credit, with or without a list of its constituent parts²⁶. These agreements²⁷ must also contain the total amount payable²⁸.

Agreements for running-account credit, and certain agreements for fixed-sum credit²⁹, must contain the rate of any interest on the credit to be provided under the agreement and the total amount of other charges included in the total charge for credit to be provided under the agreement³⁰.

All types of agreement must contain the timing of repayments to be made under the agreement³¹.

Agreements³² must contain the amount of each repayment to be made under the agreement expressed in a certain way³³. Agreements where the credit to be provided is repayable by two or more instalments, and the interest on the credit is of a certain type³⁴, must also contain the

amount of each repayment to be made under the agreement, but expressed in a different way³⁵.

Agreements³⁶ must contain the APR³⁷ in relation to the agreement or a statement indicating that the total amount payable under the agreement is not greater than the total cash price of the goods, services, land or other things the acquisition of which is to be financed by credit under the agreement³⁸. Certain debtor-creditor-supplier agreements for running-account credit³⁹ must contain the APR in relation to the agreement, calculated on the basis of specified assumptions⁴⁰.

Agreements where the APR is based on a total charge for credit which is calculated to take account of relief available⁴¹ must contain a statement indicating that it has been assumed in the calculation of the APR in relation to the agreement that relief may be available⁴² in respect of premiums under certain policies of insurance without any deduction⁴³.

Agreements under which the rate or amount of any item included in the total charge for credit will or may be varied⁴⁴ must contain a statement indicating that in calculating the APR no account has been taken of any variation which may occur under the agreement of the rate or amount of any item entering into that calculation⁴⁵. These agreements⁴⁶ must also contain a statement indicating the circumstances in which any variation⁴⁷ may occur⁴⁸.

Agreements⁴⁹ under which a person takes any article in pawn and where no separate pawn-receipt is given must contain a statement indicating that an article has been taken in pawn under the agreement and a description of the article sufficient to identify it⁵⁰.

Save for one exception all types of agreement⁵¹ in relation to which any security⁵² is to be provided by the debtor (but not any other person) to secure the carrying out of the obligations of the debtor under the agreement must contain a description of the security to be provided by the debtor in relation to the agreement sufficient to identify it and (a) a general description of any stocks and shares, including any right to become a stockholder or shareholder, to which it relates; and (b) in any other case, a description of the subject matter to which it relates⁵³.

All types of agreement which include provisions for charges on default⁵⁴ must contain an indication of any charges payable under the agreement to the creditor upon failure by the debtor or a relative⁵⁵ of his to do or refrain from doing anything which he is required to do or refrain from doing, as the case may be⁵⁶.

1 For the meaning of 'consumer credit agreement' see para 81 ante. For the meaning of 'regulated' see para 79 ante.

2 Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 2(1), Sch 1 para 1(1)(a). See also note 4 infra. For the meaning of 'hire-purchase agreement' see para 95 ante.

3 Ibid Sch 1 para 1(1)(b). See also note 4 infra. For the meaning of 'conditional sale agreement' see para 93 ante.

4 Ibid Sch 1 para 1(1)(c). Where the document and a pawn-receipt are combined, the words ', and Pawn-Receipt' must be inserted in the heading after the word 'Agreement': Sch 1 para 1(2). Where the document embodies an agreement of which at least one part is a credit agreement not regulated by the Consumer Credit Act 1974, the word 'partly' must be inserted before 'regulated' unless the regulated and unregulated parts of the agreement are clearly separate: Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 1 para 1(3). For the meaning of 'pawn-receipt' see para 210 post. As to the meaning of 'embodies' see para 115 note 2 ante. For the meaning of 'unregulated' see para 79 ante.

5 For the meaning of 'creditor' see para 81 note 2 ante.

6 Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 1 para 2. For the meaning of 'debtor' see para 81 note 3 ante.

7 For the meaning of 'restricted-use credit agreement' see para 86 ante. For the meaning of 'debtor-creditor-supplier agreement' see para 87 ante.

- 8 For the meaning of 'fixed-sum credit' see para 85 ante.
- 9 For the meaning of 'finance' see para 83 note 8 ante.
- 10 For the meaning of 'goods' see para 82 note 5 ante.
- 11 For the meaning of 'land' see para 93 note 2 ante.
- 12 Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 1 para 3.
- 13 For the meaning of 'cash price' see para 162 note 13 ante.
- 14 Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 1 para 4.
- 15 *Ie* agreements falling within *ibid* Sch 1 para 3, except agreements under which (1) the total amount payable by the debtor is not greater than the total cash price referred to in Sch 1 para 4; and (2) there is no advance payment falling within Sch 1 para 5: see Sch 1 para 6. 'Advance payment' includes any deposit and in relation to a regulated consumer credit agreement includes also any part-exchange allowance in respect of any goods agreed in antecedent negotiations to be taken by the creditor in part-exchange but does not include a repayment of credit or any insurance premium or any amount entering into the total charge for credit: reg 1(2). For the meaning of 'deposit' see para 83 note 10 ante. For the meaning of 'antecedent negotiations' see para 177 ante. As to the meaning of 'repayment' see para 162 note 15 ante. As to the total charge for credit see para 162 note 7 ante; and see also paras 91 ante, 224 et seq post.
- 16 *Ie* the total cash price to be shown under *ibid* Sch 1 para 4: see Sch 1 para 6.
- 17 *Ie* the total of any advance payments to be shown under *ibid* Sch 1 para 5: Sch 1 para 6.
- 18 *Ie* whether under the agreement or as a condition precedent to the making of the agreement: see *ibid* Sch 1 para 5.
- 19 For the meaning of 'cancellable agreement' see para 162 note 10 ante; and see also para 183 note 1 post.
- 20 Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 1 para 5. Such payments may be made, for example, by way of cash, cheque or part-exchange.
- 21 *Ie* agreements for fixed-sum credit not falling within *ibid* Sch 1 para 3 (see the text and note 12 supra): see Sch 1 para 7.
- 22 *Ibid* Sch 1 para 7.
- 23 For the meaning of 'running-account credit' see para 84 ante.
- 24 Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 1 para 8. For the meaning of 'credit limit' see para 84 note 6 ante. The credit limit must be expressed as (1) a sum of money; (2) a statement that the credit limit will be determined by the creditor from time to time under the agreement and that notice of it will be given by him to the debtor; (3) a sum of money together with a statement that the creditor may vary the credit limit to such sum as he may from time to time determine under the agreement and that notice of it will be given by him to the debtor; (4) in a case not falling within head (1), (2) or (3) supra, either a statement indicating the manner in which the credit limit will be determined and that notice of it will be given by the creditor to the debtor or a statement indicating that there is no credit limit: see Sch 1 para 8.
- 25 *Ie* agreements for fixed-sum credit except agreements (1) which do not specify either the intervals between repayments or the amounts of repayments or both the intervals and the amounts (*ibid* Sch 1 para 9(a)); (2) under which the total amount payable by the debtor to discharge his indebtedness in respect of the amount of credit provided may vary according to any formula specified in the agreement having effect by reference to movements in the level of any index or to any other factor (Sch 1 para 9(b)); (3) which provide for a variation of, or permit the creditor to vary, (whether or not by reference to any index) the amount or rate of any item included in the total charge for credit after the relevant date (Sch 1 para 9(c)); or (4) under which the total amount payable by the debtor is not greater than the total cash price referred to in Sch 1 para 4 (Sch 1 para 9(d)). 'The relevant date' must be determined in accordance with the Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51 (see para 224 et seq post) and, in the case of modifying agreements, the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 7(7) (see para 193 note 11 post): reg 1(2).
- 26 *Ibid* Sch 1 para 9.
- 27 *Ie* agreements falling within *ibid* Sch 1 para 9: see Sch 1 para 11.

28 le the total of any amounts to be shown under ibid Sch 1 paras 5, 6 or 7, and 9: Sch 1 para 11.

29 le agreements for fixed-sum credit falling within the exceptions in ibid Sch 1 para 9(a)-(c) (see note 25 supra): see Sch 1 para 10.

30 Ibid Sch 1 para 10. However, where any such charge cannot be stated as an amount, the rate of the charge or the formula in accordance with which it may be calculated and the total amount of the other such charges must be shown separately: Sch 1 para 10.

31 Ibid Sch 1 para 12. The timing of repayments must be expressed by reference to one or more of the following: (1) the dates on which each repayment is to be made; (2) the frequency and number of the repayments and the date of the first repayment or a statement indicating the manner in which that date will be determined; (3) a statement indicating the manner in which the dates of the repayments will be determined: Sch 1 para 12.

32 le all types of agreement except those falling within ibid Sch 1 para 14 (see the text and notes 34-35 infra): see Sch 1 para 13.

33 Ibid Sch 1 para 13. The amount of each repayment must be expressed as (1) a sum of money; (2) a specified proportion of a specified amount, including the amount outstanding from time to time; (3) a combination of heads (1) and (2) supra; or (4) in a case where the amount of any repayment cannot be expressed in accordance with head (1), (2) or (3) supra, a statement indicating the manner in which the amount will be determined: Sch 1 para 13.

34 le interest of a type to which the Finance Act 1982 s 26 and Sch 7 (both repealed: see now the Income and Corporation Taxes Act 1988 ss 369-379 (as amended); and INCOME TAXATION) apply: see the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 1 para 14.

35 Ibid Sch 1 para 14. The amount may be shown with or without the equivalent repayment after deduction of tax in accordance with the Finance Act 1982 s 26 and Sch 7 (both repealed: see note 34 supra): see the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 1 para 14. The amount of each repayment must be expressed as (1) a sum of money; (2) a specified proportion of a specified amount, including the amount outstanding from time to time; (3) a combination of heads (1) and (2) supra; or (4) in a case where the amount of any repayment cannot be expressed in accordance with head (1), (2) or (3) supra a statement indicating the manner in which the amount will be determined: see Sch 1 para 14. However, where the amounts to be paid by the debtor after deduction of tax in accordance with the Finance Act 1982 s 26 and Sch 7 (both repealed: see note 34 supra) are the same, these requirements may be satisfied by a statement indicating the lowest and highest amounts of the repayments to be made under the agreement before deduction of tax: Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 1 para 14 proviso.

36 le all types of agreement except those referred to in ibid Sch 1 para 16 (see the text and note 39 infra): see Sch 1 para 15.

37 'The APR' means the annual percentage rate of charge for credit determined in accordance with the Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51 (see para 224 et seq post) and the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 1(2), Sch 7 and, in the case of modifying agreements, reg 7, Sch 8 Pt I (see paras 192-193 post): reg 1(2). Schedule 7 contains provisions relating to the disclosure of the APR, and permits the minor variation of the strict requirements in certain circumstances: see Sch 7. In documents embodying regulated consumer credit agreements (other than agreements of the description specified in the Consumer Credit (Notices of Cancellation Rights) (Exemptions) Regulations 1983, SI 1983/1558 (see para 183 note 6 post) in relation to which there are no charges forming part of the total charge for credit), the APR referred to in the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 1 paras 15-17 must (1) be denoted as 'APR' or 'annual percentage rate' or 'annual percentage rate of the total charge for credit'; and (2) be afforded no less prominence than any of the other financial and related particulars referred to in Sch 1 paras 3-19 and the statements specified in reg 2(3), Sch 2 Pt I Forms 5-10 (see para 162 ante): reg 2(6) (amended by SI 1985/666).

38 Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 1 para 15.

39 le debtor-creditor-supplier agreements for running-account credit under which (1) the debtor agrees to pay the creditor an amount specified in the agreement on specified occasions; (2) there is a credit limit; and (3) charges for credit are either a fixed amount in respect of each transaction or calculated as a proportion of the price payable under a transaction financed by the credit: see ibid Sch 1 para 16.

40 Ibid Sch 1 para 16. The APR in relation to the agreement must be calculated on the following assumptions: (1) the first assumption is that (a) the debtor is provided with an amount of credit at the date of the making of the agreement which, taken with the amount of the charge for that credit ascertained at that

date, is equal to the credit limit; and (b) the debtor repays the sum of the amounts referred to in head (a) supra by payments of the amounts specified in the agreement on the occasions specified in the agreement and makes no other payment and obtains no further credit in relation to the account; (2) the second assumption is the like assumption as in head (1) supra save that the sum of the amounts referred to in head (a) supra must be taken to be one-third of the credit limit: see Sch 1 para 16.

41 le under the Income and Corporation Taxes Act 1970 s 19 and the Finance Act 1976 Sch 4 (both repealed: see now the Income and Corporation Taxes Act 1988 ss 266, 274 (both as amended); and INCOME TAXATION): see the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 1 para 17.

42 le under the Income and Corporation Taxes Act 1970 s 19 and the Finance Act 1976 Sch 4 (both repealed: see note 41 supra): see the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 1 para 17.

43 le under the Income and Corporation Taxes Act 1970 s 21 (repealed: see now the Income and Corporation Taxes Act 1988 ss 266, 274 (both as amended); and INCOME TAXATION): Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 1 para 17.

44 le other than a variation in consequence of an event which is certain to occur: see *ibid* Sch 1 para 18.

45 *Ibid* Sch 1 para 18.

46 le agreements falling within *ibid* Sch 1 para 18: see Sch 1 para 19.

47 le any variation referred to in *ibid* Sch 1 para 18: see Sch 1 para 19.

48 *Ibid* Sch 1 para 19. Where that information is ascertainable at the time at which the document referred to in the Consumer Credit Act 1974 s 61(1) (see para 160 ante) is presented or sent to the debtor for signature, the statement must also indicate the time at which any such variation may occur: see the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 1 para 19. See also *Lombard Tricity Finance Ltd v Paton* [1989] 1 All ER 918, CA.

49 le agreements to which the Consumer Credit Act 1974 s 114 (see para 210 post) applies: see the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 1 para 20.

50 *Ibid* Sch 1 para 20.

51 le except those referred to in *ibid* Sch 1 para 20: see Sch 1 para 21.

52 For the meaning of 'security' see para 200 note 1 post.

53 Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 1 para 21.

54 As to default see para 263 et seq post.

55 For the meaning of 'relative' see para 116 note 12 ante.

56 Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 1 para 22.

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

163 Detailed information to be contained in consumer credit agreements

TEXT AND NOTES--Agreements to which SI 1980/51 reg 15A (see PARA 233) applies must contain the initial standard rate within the meaning of reg 15A(2) together with a statement explaining (1) what that rate is; and (2) that it has been taken into account in calculating the APR: SI 1983/1553 Sch 1 para 19A (added by SI 1999/3177). Agreements of fixed duration for running-account credit must contain the duration of the agreement: SI 1983/1553 Sch 1 para 8A (Sch 1 paras 8A, 8B added by SI 2004/1482). Agreements for fixed-sum credit must contain the duration or minimum duration of the agreement: SI 1983/1553 Sch 1 para 8B (as so added). See also Sch 1 para 14A (inclusion of order or proportion in which amounts paid are to be applied or appropriated), Sch 1 para 23 (inclusion of cancellation rights) and Sch 1 para 24 (inclusion of amount payable on early settlement) (all added by SI 2004/1482 (amended by SI 2004/2619)).

TEXT AND NOTES 1-4--SI 1983/1553 reg 2(1), Sch 1 para 1 substituted: SI 2004/1482.

TEXT AND NOTES 5, 6--SI 1983/1553 Sch 1 para 2 amended: SI 2004/3236.

TEXT AND NOTES 25, 26--SI 1983/1553 Sch 1 para 9 substituted: SI 2004/1482.

TEXT AND NOTES 29, 30--SI 1983/1553 Sch 1 para 10 substituted: SI 2004/1482.

NOTE 37--SI 1983/1553 Sch 7 amended: SI 1999/3177, SI 2004/1482.

TEXT AND NOTES 54-56--SI 1983/1553 Sch 1 para 22 substituted: SI 2004/1482.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(3) FORM, CONTENT AND SIGNING OF REGULATED AGREEMENTS/164. Form and content of regulated consumer hire agreements.

164. Form and content of regulated consumer hire agreements.

Documents embodying regulated consumer hire agreements¹ other than modifying agreements², must contain the information set out in the Consumer Credit (Agreements) Regulations 1983³.

Where certain financial information⁴ cannot be exactly ascertained by the owner⁵, estimated information based on such assumptions as the owner may reasonably make in all the circumstances of the case and an indication of the assumptions made must be included in documents embodying regulated consumer hire agreements⁶. Information about financial and related particulars⁷ must be shown together as a whole in documents embodying regulated consumer hire agreements and not interspersed with other information apart from sub-totals of total amounts and cross-references to terms of the agreement⁸.

Documents embodying regulated consumer hire agreements must contain statements of the protection and remedies available to hirers⁹ under the Consumer Credit Act 1974¹⁰; and such documents must also contain a signature box¹¹.

Documents embodying regulated consumer hire agreements must embody any security provided in relation to the regulated agreement by the hirer¹².

1 For the meaning of 'consumer hire agreement' see para 82 ante. For the meaning of 'regulated' see para 79 ante. As to the meaning of 'embodying' see para 115 note 2 ante.

2 As to the meaning of 'modifying agreement' see para 191 post. As to the form and content of modifying agreements see paras 192-194 post.

3 Ie the information set out in the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 3(1), Sch 3: see reg 3(1); and para 165 post.

4 Ie any information about financial and related particulars set out in ibid Sch 3 paras 5, 6 (see para 165 post): see reg 3(2).

5 For the meaning of 'owner' see para 82 note 1 ante.

6 Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 3(2).

7 Ie the information set out in ibid Sch 3 paras 3-8 (see para 165 post): see reg 3(4).

8 Ibid reg 3(4). However, in the case of documents embodying consumer hire agreements relating to more than one description of goods to be bailed or hired under the agreement, the list or other description of the goods referred to in Sch 3 para 3 (see para 165 post) may be shown in a schedule to such document, provided that a reference to the schedule to such document is shown together with the remaining financial and related particulars specified in Sch 3 paras 4-8 (see para 165 post): reg 3(5). For the meaning of 'goods' see para 82 note 5 ante. As to bailment generally see BAILMENT.

9 Ie statements in the form specified in ibid reg 3(3), Sch 4 Forms 1-5: see reg 3(3).

10 For the meaning of 'hirer' see para 82 note 3 ante.

11 Ie a signature box in the form specified in the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 3(6), Sch 5 Pt II Forms 9, 10: see reg 3(6). If the agreement is one to which the Consumer Credit Act 1974 s 58(1) (see para 182 post) applies or is a cancellable agreement, documents embodying the regulated consumer hire agreement must contain a separate box immediately above, below or adjacent to the signature box in which the appropriate statements specified in the Consumer Credit (Agreements) Regulations

1983, SI 1983/1553, Sch 4 Forms 1-3 must be included: see reg 3(6). For the meaning of 'cancellable agreement' see para 162 note 10 ante; and see also para 183 note 1 post.

12 Ibid reg 3(7).

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

164 Form and content of regulated consumer hire agreements

TEXT AND NOTES 7, 8--SI 1983/1553 reg 3(4) substituted, reg 3(5) amended: SI 2004/1482.

NOTES 9, 11--SI 1983/1553 Sch 4 substituted: SI 2004/1482.

NOTE 11--SI 1983/1553 reg 3(6) amended: SI 2004/1482 (amended by SI 2004/2619).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(3) FORM, CONTENT AND SIGNING OF REGULATED AGREEMENTS/165. Detailed information to be contained in consumer hire agreements.

165. Detailed information to be contained in consumer hire agreements.

All types of regulated consumer hire agreement¹ must contain a heading in the following form of words shown prominently on the first page of the document: 'Hire Agreement regulated by the Consumer Credit Act 1974'².

All types of agreement must contain the name and a postal address of the owner³ and the name and a postal address of the hirer⁴.

All types of agreement must contain a list or other description of the goods to be bailed or hired under the agreement⁵.

All types of agreement, in relation to which any advance payment⁶ is to be made by the hirer (whether under the agreement or as a condition precedent to the making of the agreement) before he is to take possession of the goods to be bailed or hired under the agreement or, as the case may be, before he enters into the agreement, must contain the amount of the advance payments to be made by the hirer and, in the case of a cancellable agreement⁷, the nature of such payments⁸.

All types of agreement must contain (1) the amount of each hire payment, other than an advance payment⁹; (2) the timing of such payments to be made under the agreement expressed by reference to one or more of the following:

- 60 (a) the dates on which each payment is to be made¹⁰;
- 61 (b) the frequency and number of the payments and the date of the first payment or a statement indicating the manner in which that date will be determined¹¹;
- 62 (c) a statement indicating the manner in which the dates of the payments will be determined¹².

All types of agreement including provisions for payments other than advance payments and hire payments must contain:

- 63 (i) the amount, or a statement indicating the manner in which the amount will be determined, of each of the following descriptions of payments (not being an advance payment or a hire payment to be shown under the above provisions¹³) to be made under the agreement by, or on behalf of, the hirer, or a relative of his, to the owner¹⁴, that is to say: (A) any payment under arrangements for the installation, care, maintenance or protection of any goods; (B) any premium under a contract of insurance; (C) any payment payable on termination of the agreement, other than a payment of default¹⁵;
- 64 (ii) the timing of such payments expressed by reference to one or more of heads (a) to (c) above¹⁶.

All types of agreement including provisions for variation of hire or other payments, where the amount of any such payment following any variation cannot be ascertained at the time of the making of the agreement, must contain a statement indicating the circumstances in which payments¹⁷ may be varied under the agreement and, where that information is ascertainable at the time at which the document¹⁸ is presented or sent to the hirer for signature, the time at

which any such variation may occur¹⁹. However, this does not apply to a variation under the agreement which takes account only of a change in VAT²⁰.

All types of agreement including a provision that goods are to be bailed or hired for a fixed period or a minimum period must contain a statement indicating that goods are to be bailed or hired under the agreement for a fixed period or a minimum period, as the case may be, and the duration of that period²¹.

All types of agreement in relation to which any security²² is to be provided by the hirer to secure the carrying out of the obligations of the hirer under the agreement must contain a description of the security to be provided by the hirer in relation to the agreement sufficient to identify it and a description of the subject matter to which it relates²³.

All types of agreement including provisions for charges on default must contain an indication of any charges payable under the agreement to the owner upon failure by the hirer or a relative of his to do or refrain from doing anything which he is required to do or refrain from doing, as the case may be²⁴.

1 For the meaning of 'consumer hire agreement' see para 82 ante. For the meaning of 'regulated' see para 79 ante.

2 Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 3(1), Sch 3 para 1.

3 For the meaning of 'owner' see para 82 note 1 ante.

4 Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 3 para 2. For the meaning of 'hirer' see para 82 note 3 ante.

5 Ibid Sch 3 para 3. For the meaning of 'goods' see para 82 note 5 ante. As to bailment generally see BAILMENT.

6 As to the meaning of 'advance payment' see para 163 note 15 ante.

7 For the meaning of 'cancellable agreement' see para 162 note 10 ante; and see also para 183 note 1 post.

8 Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 3 para 4.

9 Ie an advance payment to be shown under ibid Sch 3 para 4 (see the text and notes 6-8 supra): Sch 3 para 5(1).

10 Ibid Sch 3 para 5(2)(a).

11 Ibid Sch 3 para 5(2)(b).

12 Ibid Sch 3 para 5(2)(c).

13 Ie to be shown under ibid Sch 3 para 4 or Sch 3 para 5.

14 References in ibid Sch 3 para 6 to the owner include references to his near relative, his partner and a member of a group of which he is a member, to any person nominated by him or by any such person in relation to the arrangements, the contract of insurance or the termination of the agreement, and to a near relative of his partner: Sch 3 para 6(3). 'Near relative' means, in relation to any person, the husband, wife, father, mother, brother, sister, son or daughter of that person: Sch 3 para 6(3). 'Group' means the person (including a company) having control of a company together with all the companies directly or indirectly controlled by him: Sch 3 para 6(3).

15 Ibid Sch 3 para 6(1). Payments of default are to be shown under Sch 3 para 10 (see the text and note 24 infra).

16 Ibid Sch 3 para 6(2).

17 Ie any hire payment to be shown under ibid Sch 3 para 5 or any other payment to be shown under Sch 3 para 6.

18 Ie the document referred to in the Consumer Credit Act 1974 s 61(1) (see para 160 post).

- 19 Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 3 para 7(1).
- 20 Ibid Sch 3 para 7(2). References to a change in VAT include references to a change to or from no tax being charged: Sch 3 para 7(3).
- 21 Ibid Sch 3 para 8.
- 22 For the meaning of 'security' see para 200 note 1 post.
- 23 Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 3 para 9.
- 24 Ibid Sch 3 para 10.

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

165 Detailed information to be contained in consumer hire agreements

TEXT AND NOTES 1, 2--SI 1983/1553 Sch 3 para 1 substituted: SI 2004/1482.

TEXT AND NOTES 3, 4--SI 1983/1553 Sch 3 para 2 amended: SI 2004/3236.

TEXT AND NOTE 24--SI 1983/1553 Sch 3 para 10 substituted: SI 2004/1482. See also SI 1983/1553 Sch 3 para 11 (inclusion of cancellation rights) (added by SI 2004/1482).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(3) FORM, CONTENT AND SIGNING OF REGULATED AGREEMENTS/166. Reproduction of statutory forms.

166. Reproduction of statutory forms.

The wording of any form specified in the Consumer Credit (Agreements) Regulations 1983¹ must be reproduced in documents embodying regulated agreements² without any alteration or addition, except that:

- 65 (1) the words 'the creditor' or 'the owner' may be replaced by the name of the creditor or owner³, by the expression by which the creditor or owner is referred to in the agreement or by an appropriate pronoun, and any consequential changes to pronouns and verbs or other consequential grammatical changes may be made⁴;
- 66 (2) the word 'DEBTOR' may be replaced by 'BORROWER' or 'CUSTOMER' and the word 'Debtors(s)' may be replaced by 'Borrower(s)' or 'Customer(s)'⁵; and
- 67 (3) every form must be completed in accordance with any footnote⁶.

Where words are shown in capital letters in any specified form⁷, and are reproduced in documents embodying regulated agreements, they must be afforded more prominence⁸ than any other lettering in that form⁹ and no less prominence than that given to any other information in the document apart from the heading to the document, the APR¹⁰, trade names, names of parties to the agreement or lettering¹¹ in the document inserted in handwriting¹².

1 Ie the forms specified in the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, regs 2(3), (7), 3(3), (6), 4, Schs 2, 4, 5: see reg 5.

2 For the meaning of 'regulated agreement' see para 79 ante. As to the meaning of 'embodiment' see para 115 note 2 ante.

3 For the meaning of 'creditor' see para 81 note 2 ante; and for the meaning of 'owner' see para 82 note 1 ante.

4 Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 5(1)(a).

5 Ibid reg 5(1)(b). For the meaning of 'debtor' see para 81 note 3 ante.

6 Ibid reg 5(1)(c). Any such footnote must not be treated as part of any specified form (see note 1 supra), and may be reproduced in addition to any such form: reg 5(2). Where any such footnote requires any words to be omitted, those words must be omitted or deleted: reg 5(3).

7 See note 1 supra.

8 Ie whether by capital letters, underlining, larger or bolder print or otherwise: see the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 5(4).

9 Ie except lettering inserted in accordance with head (3) in the text: see ibid reg 5(4).

10 For the meaning of 'APR' see para 163 note 37 ante.

11 'Lettering' includes figures and symbols: Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 1(2).

12 Ibid reg 5(4).

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

166 Reproduction of statutory forms

TEXT AND NOTES 7-12--SI 1983/1553 reg 5(4) amended: SI 2004/1482.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(3) FORM, CONTENT AND SIGNING OF REGULATED AGREEMENTS/167. Prescribed terms and signing of regulated agreements.

167. Prescribed terms and signing of regulated agreements.

A regulated agreement¹ is not properly executed unless the document contains all the prescribed terms². The terms which are prescribed for the purposes of the Consumer Credit Act 1974³ are set out in the Consumer Credit (Agreements) Regulations 1983⁴. A court cannot make an order enforcing an improperly executed agreement unless a document containing all the prescribed terms of the agreement was signed by the debtor or hirer⁵.

The lettering⁶ of the terms of the agreement included in the document⁷ containing all the prescribed terms of the regulated agreement, and of the information contained in that document for the purpose of conforming to the regulations must be easily legible and of a colour which is readily distinguishable from the colour of the paper⁸.

The signature of the document must be made in the following manner:

- 68 (1) by the debtor or hirer, or by or on behalf of the debtor or hirer in the case of a partnership or an unincorporated body of persons, in the space in the document indicated for the purpose; and, subject to head (3) below, the date of the signature must be inserted in the space in the document indicated for the purpose⁹;
- 69 (2) by the creditor¹⁰ or owner¹¹, or by a person on his behalf, outside any signature box in which the debtor or hirer may sign; and, subject to head (3) below, the date of the signature must be inserted outside any such signature box¹²;
- 70 (3) in the case of a regulated agreement which is not a cancellable agreement¹³, the date on which the unexecuted agreement¹⁴ becomes an executed agreement¹⁵ may be inserted in the document; and in such a case any other date specified in heads (1) and (2) above need not be inserted¹⁶; and
- 71 (4) nothing in this provision¹⁷ prohibits the inclusion in the document, near to any such signature, of the signature by any witness outside any signature box in which the debtor or hirer may sign¹⁸.

1 For the meaning of 'regulated agreement' see para 79 ante.

2 See the Consumer Credit Act 1974 s 61(1)(a); and para 160 ante. For the meaning of 'prescribed' see para 114 note 8 ante.

3 Ie the terms which under the Consumer Credit Act 1974 s 61(1)(a) (see para 160 ante) must be contained in a document if a regulated agreement is not to be improperly executed and the terms which under s 127(3) (see para 169 post) must be contained in a document before any enforcement order can be made under s 65(1) (see para 169 post) if s 61(1)(a) was not complied with: see the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 6(1).

4 Ie ibid reg 6(1), Sch 6: see reg 6(1); and para 168 post.

5 See the Consumer Credit Act 1974 s 127(3); and para 169 post. For the meaning of 'debtor' see para 81 note 3 ante; and for the meaning of 'hirer' see para 82 note 3 ante.

6 Ie apart from any signature: see the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 6(2). For the meaning of 'lettering' see para 166 note 11 ante.

7 Ie referred to in the Consumer Credit Act 1974 s 61(1)(a): see the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 6(2).

8 Ibid reg 6(2).

- 9 Ibid reg 6(3)(a).
- 10 For the meaning of 'creditor' see para 81 note 2 ante.
- 11 For the meaning of 'owner' see para 82 note 1 ante.
- 12 Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 6(3)(b).
- 13 For the meaning of 'cancellable agreement' see para 162 note 10 ante; and see also para 183 note 1 post.
- 14 For the meaning of 'unexecuted agreement' see para 115 note 9 ante.
- 15 For the meaning of 'executed agreement' see para 115 note 3 ante.
- 16 Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 6(3)(c).
- 17 Ie ibid reg 6: see reg 6(3)(d).
- 18 Ibid reg 6(3)(d).

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

167 Prescribed terms and signing of regulated agreements

NOTES 3-5--1974 Act s 127(3) repealed: Consumer Credit Act 2006 s 15.

TEXT AND NOTES 6-8--SI 1983/1553 reg 6(2) substituted: SI 2004/1482.

TEXT AND NOTES 9-18--See SI 1983/1553 reg 6(5) (signature where electronic communication used) (added by SI 2004/3262).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(3) FORM, CONTENT AND SIGNING OF REGULATED AGREEMENTS/168. The prescribed terms.

168. The prescribed terms.

Under the Consumer Credit (Agreements) Regulations 1983¹ the prescribed terms² are as set out below.

Restricted-use debtor-creditor-supplier agreements³ for fixed-sum credit⁴ (1) to finance⁵ a transaction comprising the acquisition of goods⁶, services, land⁷ or other things specified in the agreement or identified and agreed on at the time the agreement is made; (2) under which the total amount payable by the debtor⁸ is not greater than the total cash price⁹; and (3) under which there is no advance payment¹⁰, must contain a term stating the amount of the credit, which may be expressed as the total cash price of the goods, services, land or other things, the acquisition of which is to be financed by credit under the agreement¹¹.

Other agreements for fixed-sum credit¹² must contain a term stating the amount of the credit¹³.

Agreements for running-account credit¹⁴ must contain a term stating the credit limit¹⁵ or the manner in which it will be determined or that there is no credit limit¹⁶.

Agreements for running-account credit and certain agreements for fixed-sum credit¹⁷ must contain a term stating the rate of any interest on the credit to be provided under the agreement¹⁸.

Consumer credit agreements¹⁹ must contain a term stating how the debtor is to discharge his obligations under the agreement to make the repayments, which may be expressed by reference to a combination of any of the following: (a) number of repayments; (b) amount of repayments; (c) frequency and timing of repayments; (d) dates of repayments; (e) the manner in which any of the above may be determined, or in any other way, and any power of the creditor²⁰ to vary what is payable²¹.

Consumer hire agreements²² must contain a term stating how the hirer²³ is to discharge his obligations under the agreement to pay the hire payments²⁴, which may be expressed by reference to a combination of any of the following: (i) number of payments; (ii) amount of payments; (iii) frequency and timing of payments; (iv) dates of payments; (v) the manner in which any of the above may be determined, or in any other way, and any power of the owner²⁵ to vary what is payable²⁶.

In the application of these provisions to modifying agreements²⁷ which are or are treated²⁸ as regulated agreements²⁹, for any reference to the type of agreement there must be substituted a reference to modifying agreements which vary or supplement that type of agreement; and any reference to an agreement or a term in the description of the required information is a reference to a modified agreement or a term of a modified agreement, as the case may be³⁰.

1 See the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 6(1), Sch 6.

2 See para 167 ante. For the meaning of 'prescribed' see para 114 note 8 ante.

3 For the meaning of 'debtor-creditor-supplier agreement' see para 87 ante. For the meaning of 'restricted-use credit agreement' see para 86 ante.

4 For the meaning of 'fixed-sum credit' see para 85 ante.

5 For the meaning of 'finance' see para 83 note 8 ante.

- 6 For the meaning of 'goods' see para 82 note 5 ante.
- 7 For the meaning of 'land' see para 93 note 2 ante.
- 8 For the meaning of 'debtor' see para 81 note 3 ante.
- 9 For the meaning of 'cash price' see para 162 note 13 ante.
- 10 For the meaning of 'advance payment' see para 163 note 15 ante.
- 11 Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 6 para 1. For the meaning of 'credit' see para 83 ante.
- 12 Ie agreements for fixed-sum credit not falling within ibid Sch 6 para 1.
- 13 Ibid Sch 6 para 2.
- 14 For the meaning of 'running-account credit' see para 84 ante.
- 15 For the meaning of 'credit limit' see para 84 note 6 ante.
- 16 Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 6 para 3.
- 17 Ie agreements for fixed-sum credit falling within the exceptions in ibid reg 2(1), Sch 1 para 9(a)-(c) (see para 163 ante).
- 18 Ibid Sch 6 para 4.
- 19 For the meaning of 'consumer credit agreement' see para 81 ante.
- 20 For the meaning of 'creditor' see para 81 note 2 ante.
- 21 Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 6 para 5.
- 22 For the meaning of 'consumer hire agreement' see para 82 ante.
- 23 For the meaning of 'hirer' see para 82 note 3 ante.
- 24 'Hire payment' means any payment to be made by the hirer in relation to any period in consideration of the bailment or hiring to him of goods under a regulated consumer hire agreement: Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 1(2).
- 25 For the meaning of 'owner' see para 82 note 1 ante.
- 26 Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 6 para 6.
- 27 As to the meaning of 'modifying agreement' see para 191 post. As to the form and content of modifying agreements see paras 192-194 post.
- 28 Ie under the Consumer Credit Act 1974 s 82(3) (see para 191 post).
- 29 For the meaning of 'regulated agreement' see para 79 ante.
- 30 See the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 7(14)(a), (b). 'Modified agreement' means an earlier agreement as varied or supplemented by a modifying agreement, which is treated as revoking the earlier agreement and containing provisions reproducing the combined effect of the two agreements: reg 1(2).

A term is not a prescribed term under these provisions for the purposes of the Consumer Credit Act 1974 ss 61(1)(a), 127(3) (see paras 160, 169 post) if the term was a term of the earlier agreement and has not been varied or supplemented by the modifying agreement: see the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 7(14)(c).

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

168 The prescribed terms

NOTES 11, 13--Where the lender provides money for the purpose of discharging a pre-existing liability of the debtor to another lender, whether that money is part of the credit or part of the cost of the credit depends on the circumstances of the particular case: *McGinn v Grangewood Securities Ltd* [2002] EWCA Civ 522, [2002] All ER (D) 184 (Apr).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(3) FORM, CONTENT AND SIGNING OF REGULATED AGREEMENTS/169. Consequences of improper execution.

169. Consequences of improper execution.

An improperly executed regulated agreement¹ is enforceable against the debtor² or hirer³ on an order of the court⁴ only⁵. A retaking of goods⁶ or land⁷ to which a regulated agreement relates is an enforcement of the agreement⁸.

The court must not make an enforcement order under this provision⁹ if the provisions relating to the signing of agreements¹⁰ were not complied with unless a document¹¹ itself containing all the prescribed terms¹² of the agreement was signed by the debtor¹³ or hirer¹⁴. Where an enforcement order is made in such a case, the order may direct that the regulated agreement is to have effect as if it did not include a term omitted from the document signed by the debtor or hirer¹⁵.

The court must not make an enforcement order under this provision¹⁶ in the case of a cancellable agreement¹⁷ if (1) the duty to supply copies¹⁸ was not complied with, and the creditor¹⁹ or owner²⁰ did not give a copy of the executed agreement, and of any other document referred to in it, to the debtor or hirer before the commencement of the proceedings in which the enforcement order is sought; or (2) the duty to give notice of cancellation rights²¹ was not complied with²².

1 For the meaning of 'regulated agreement' see para 79 ante. For the meaning of 'executed agreement' see para 115 note 3 ante. As to the circumstances in which an agreement is not properly executed see paras 158, 160 et seq ante. As to the terms which must be contained in a document if a regulated agreement is not to be improperly executed see paras 167-168 ante.

2 For the meaning of 'debtor' see para 81 note 3 ante.

3 For the meaning of 'hirer' see para 82 note 3 ante.

4 For the meaning of 'court' see para 134 note 9 ante.

5 Consumer Credit Act 1974 s 65(1). See also *R v Modupe* [1991] CCLR 29, [1991] Crim LR 530 (the agreement is not void and there is an existing liability, albeit enforceable only by order of the court). As to enforcement see the Consumer Credit Act 1974 s 127; and para 290 post.

6 For the meaning of 'goods' see para 82 note 5 ante.

7 For the meaning of 'land' see para 93 note 2 ante.

8 Consumer Credit Act 1974 s 65(2). As to a creditor's rights on conversion of goods see *Union Transport Finance Ltd v British Car Auctions Ltd* [1978] 2 All ER 385, CA. See also *Bowmakers Ltd v Barnet Instruments Ltd* [1945] KB 65, [1944] 2 All ER 579, CA.

9 Ie the Consumer Credit Act 1974 s 65(1).

10 See *ibid* s 61(1)(a); and para 160 ante.

11 Ie whether or not in the prescribed form and complying with regulations under *ibid* s 60(1) (see para 161 ante); see s 127(3).

12 As to the prescribed terms see paras 167-168 ante.

13 For the meaning of 'debtor' see para 81 note 3 ante.

14 See the Consumer Credit Act 1974 s 127(3). For the meaning of 'hirer' see para 82 note 3 ante.

15 Ibid s 127(5).

16 See note 9 supra.

17 For the meaning of 'cancellable agreement' see para 183 note 1 post. As to cancellation of agreements see para 184 et seq post.

18 See the Consumer Credit Act 1974 ss 62, 63; and paras 171-172 ante. As to the meaning of 'copy' see para 174 text and note 4 ante.

19 For the meaning of 'creditor' see para 81 note 2 ante.

20 For the meaning of 'owner' see para 82 note 1 ante.

21 See the Consumer Credit Act 1974 s 64(1); and para 183 post.

22 Ibid s 127(4). As to the commencement of proceedings in the county court generally see COURTS. See also *Southern and District Finance plc v Barnes* [1995] CCLR 62, 27 HLR 691 (failure to give notice of cancellation rights); *National Guardian Mortgage Corpn v Wilkes* [1993] CCLR 1 (failure to give advance copy of agreement); *Rank Xerox Finance Ltd v Hepple* [1994] CCLR 1 (failure to notify hirer clearly of obligations on breach).

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

169 Consequences of improper execution

NOTE 5--See *Dimond v Lovell* [2000] 2 All ER 897, HL.

NOTES 11, 15, 22--1974 Act s 127(3)-(5) repealed: Consumer Credit Act 2006 s 15, Sch 4.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(3) FORM, CONTENT AND SIGNING OF REGULATED AGREEMENTS/170. Acceptance of credit-tokens.

170. Acceptance of credit-tokens.

The debtor¹ is not liable under a credit-token agreement² for use made of the credit-token³ by any person unless the debtor had previously accepted the credit-token, or the use constituted an acceptance of it by him⁴.

- 1 For the meaning of 'debtor' see para 81 note 3 ante.
- 2 For the meaning of 'credit-token agreement' see para 88 ante.
- 3 For the meaning of 'credit-token' see para 88 ante. As to misuse of credit-tokens see paras 246-247 post.
- 4 Consumer Credit Act 1974 s 66(1). The debtor accepts a credit-token when (1) it is signed; or (2) a receipt for it is signed; or (3) it is first used, either by the debtor himself or by a person who, pursuant to the agreement, is authorised by him to use it: s 66(2).

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(4) COPIES/171. Duty to supply copy of unexecuted agreement.

(4) COPIES

171. Duty to supply copy of unexecuted agreement.

If the unexecuted agreement¹ is presented personally to the debtor² or hirer³ for his signature, but on the occasion when he signs it the document does not become an executed agreement⁴, a copy⁵ of it, and of any other document referred to in it, must be there and then delivered to him⁶. If the unexecuted agreement is sent to the debtor or hirer for his signature, a copy of it, and of any other document referred to in it, must be sent to him at the same time⁷. A regulated agreement⁸ is not properly executed if these requirements are not observed⁹.

- 1 For the meaning of 'unexecuted agreement' see para 115 note 9 ante.
- 2 For the meaning of 'debtor' see para 81 note 3 ante.
- 3 For the meaning of 'hirer' see para 82 note 3 ante.
- 4 For the meaning of 'executed agreement' see para 115 note 3 ante.
- 5 As to the meaning of 'copy' see para 174 text and note 4 post.
- 6 Consumer Credit Act 1974 s 62(1). As to when an agreement is made see *R & B Customs Brokers Co Ltd v United Dominions Trust Ltd*[1988] 1 All ER 847, [1988] 1 WLR 321, CA.
- 7 Consumer Credit Act 1974 s 62(2). See also *PB Leasing Ltd v Patel and Patel (t/a Plankhouse Stores)* [1995] CCLR 82.
- 8 For the meaning of 'regulated agreement' see para 79 ante.
- 9 Consumer Credit Act 1974 s 62(3). As to execution see para 160 ante.

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(4) COPIES/172. Duty to supply copy of executed agreement.

172. Duty to supply copy of executed agreement.

If the unexecuted agreement¹ is presented personally to the debtor² or hirer³ for his signature, and on the occasion when he signs it the document becomes an executed agreement⁴, a copy⁵ of the executed agreement, and of any other document referred to in it, must be there and then delivered to him⁶. Unless (1) this provision applies⁷; or (2) the unexecuted agreement was sent to the debtor or hirer for his signature and, on the occasion of his signing it, the document became an executed agreement⁸, a copy of the executed agreement, and of any other document referred to in it, must be given to the debtor or hirer within the seven days following the making of the agreement⁹. A regulated agreement¹⁰ is not properly executed if these requirements are not observed¹¹.

- 1 For the meaning of 'unexecuted agreement' see para 115 note 9 ante.
- 2 For the meaning of 'debtor' see para 81 note 3 ante.
- 3 For the meaning of 'hirer' see para 82 note 3 ante.
- 4 For the meaning of 'executed agreement' see para 115 note 3 ante.
- 5 As to the meaning of 'copy' see para 174 text and note 4 post.
- 6 Consumer Credit Act 1974 s 63(1).
- 7 Ie ibid s 63(1): see s 63(2)(a).
- 8 Ibid s 63(2)(b).
- 9 Ibid s 63(2). In the case of a cancellable agreement, a copy under s 63(2) must be sent by post: s 63(3). In the case of a credit-token agreement, a copy need not be given within the seven days following the making of the agreement if it is given before or at the time when the credit-token is given to the debtor: s 63(4). For the meaning of 'credit-token agreement' and 'credit-token' see para 88 ante. For the meaning of 'cancellable agreement' see para 183 note 1 post.
- 10 For the meaning of 'regulated agreement' see para 79 ante.
- 11 Consumer Credit Act 1974 s 63(5). As to execution see para 160 ante.

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

172 Duty to supply copy of executed agreement

NOTE 9--1974 s 63(3) amended: Consumer Credit Act 1974 (Electronic Communications) Order 2004, SI 2004/3236. See also the 1974 Act s 176A (electronic transmission of documents) (added by SI 2004/3236).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(4) COPIES/173. Duty to supply copy of document referred to in agreement.

173. Duty to supply copy of document referred to in agreement.

The Consumer Credit Act 1974 imposes a duty to supply a copy¹ of a document referred to in an unexecuted agreement² or an executed agreement³. However, this duty does not apply to a document of any of the following kinds:

- 72 (1) a document obtained by the debtor⁴ or hirer⁵ from a person other than the creditor⁶ or owner⁷ and supplied by the debtor or hirer to the creditor or owner⁸;
- 73 (2) in the case of an agreement of a specified description⁹ and terms of which are contained in a catalogue which is at all reasonable times during the agreement readily available for inspection by the debtor, a copy of the catalogue in question¹⁰;
- 74 (3) a document, not being a security¹¹, which constitutes, evidences or relates to title to property of any kind or relates to the rights or duties of the debtor or hirer in respect of such property¹²;
- 75 (4) a document kept, or to be kept, by the debtor or hirer under the terms of, or in consequence of, the agreement¹³;
- 76 (5) an official or certified copy of any entry in a register maintained by, or on behalf of, a government department or other body charged with a public administrative or statutory function and open to public inspection, whether in the United Kingdom or elsewhere¹⁴;
- 77 (6) an enactment¹⁵;
- 78 (7) a document, other than an enactment, published by, or on behalf of, a government department or other body charged with a public administrative or statutory function, whether in the United Kingdom or elsewhere¹⁶;
- 79 (8) in the case of a modifying agreement¹⁷, a document embodying the terms of the earlier agreement other than a document a copy of which is required to be given under certain other provisions of the Consumer Credit Act 1974¹⁸;
- 80 (9) in the case of an unexecuted or executed agreement where the prospective regulated agreement¹⁹ or regulated agreement, as the case may be, is to be or is secured on land²⁰, any document referred to in the unexecuted agreement or executed agreement in a case where the debtor or hirer has earlier been supplied with a copy of that document in an identical form by virtue of any requirement of the Consumer Credit Act 1974²¹.

1 As to the meaning of 'copy' see para 174 text and note 4 post.

2 See the Consumer Credit Act 1974 s 62; and para 171 ante. For the meaning of 'unexecuted agreement' see para 115 note 9 ante.

3 See ibid s 63; and para 172 ante. For the meaning of 'executed agreement' see para 115 note 3 ante.

4 For the meaning of 'debtor' see para 81 note 3 ante.

5 For the meaning of 'hirer' see para 82 note 3 ante.

6 For the meaning of 'creditor' see para 81 note 2 ante.

7 For the meaning of 'owner' see para 82 note 1 ante.

8 Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557, reg 11(a).

9 Ie the description specified in the Consumer Credit (Notices of Cancellation Rights) (Exemptions) Regulations 1983, SI 1983/1558, reg 2, Schedule (see para 183 note 6 post).

10 Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557, reg 11(aa) (added by SI 1985/666).

11 For the meaning of 'security' see para 200 note 1 post.

12 Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557, reg 11(b).

13 Ibid reg 11(c).

14 Ibid reg 11(d). For the meaning of 'United Kingdom' see para 70 note 4 ante.

15 Ibid reg 11(e).

16 Ibid reg 11(f).

17 As to the meaning of 'modifying agreement' see para 191 post.

18 Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557, reg 11(g). The other provisions referred to are the Consumer Credit Act 1974 s 77(1) (as amended) (see para 236 post), s 78(1) (as amended) (see para 237 post), s 79(1) (as amended) (see para 240 post), s 85(1) (see para 248 post), s 105(5) (see para 200 post), s 107(1) (as amended) (see para 202 post), s 108(1) (as amended) (see para 203 post), or s 109(1) (as amended) (see para 204 post).

19 For the meaning of 'regulated agreement' see para 79 ante.

20 For the meaning of 'land' see para 93 note 2 ante.

21 Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557, reg 11(h) (added by SI 1989/591).

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(4) COPIES/174. Form and content of copies of agreements etc.

174. Form and content of copies of agreements etc.

A duty¹ to supply a copy of any document (1) is not satisfied unless the copy supplied is in the prescribed form and conforms to the prescribed requirements²; (2) is not infringed by the omission of any material, or its inclusion in condensed form, if that is authorised by regulations³, and references to copies must be construed accordingly⁴.

Regulations⁵ have been made which provide that the lettering⁶ in every notice in a form prescribed by the regulations⁷ and in every copy of an executed agreement, security instrument⁸ or other document referred to in the Consumer Credit Act 1974 and delivered or sent to a debtor, hirer or surety⁹ under any provision of the Act must, apart from any signature, be easily legible and of a colour which is readily distinguishable from the colour of the paper¹⁰.

Every copy of an executed agreement, security instrument or other document referred to in the Consumer Credit Act 1974 and delivered or sent to a debtor, hirer or surety under any provision of that Act must be a true copy¹¹. There may be omitted from any such copy (a) any information included in an executed agreement, security instrument or other document relating to the debtor, hirer or surety or included for the use of the creditor or owner only which is not required to be included by the Consumer Credit Act 1974 or any regulations under it as to the form and content of the document of which it is a copy¹²; (b) any signature box, signature or date of signature¹³; (c) in the case of any copy of an unexecuted agreement delivered or sent to the debtor or hirer¹⁴, the name and address of the debtor or hirer¹⁵; and (d) in the case of any copy of an executed agreement given to the debtor¹⁶ under which a person takes any articles in pawn, any description of the article taken in pawn¹⁷.

1 Ie imposed under any provision of the Consumer Credit Act 1974 except s 35 (copies of entries in the register: see para 119 post): see s 180(2).

2 Ibid s 180(2)(a). For the meaning of 'prescribed' see para 114 note 8 ante.

3 Ibid s 180(2)(b). For the meaning of 'regulations' see para 114 note 2 ante.

4 Ibid ss 180(2), 189(1).

5 Ie the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557, which came into operation on 19 May 1985: see reg 1(1). These regulations are partly made under the Consumer Credit Act 1974 s 180(1): see para 115 ante. As to the power to make regulations generally see para 114 ante.

6 'Lettering' includes figures and symbols: see the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557, reg 1(2).

7 The wording of any form prescribed by the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557 (as amended) must be reproduced in copies of unexecuted or executed agreements or in notices of cancellation rights (see para 183 post) sent by post under the Consumer Credit Act 1974 s 64(1)(b) or s 64(2) (see para 183 post) without any alteration or addition, except that the creditor or owner may enter the name and address of the debtor or hirer in any cancellation form prescribed by the regulations and every form must be completed in accordance with any footnote: Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557, reg 2(2). Any such footnote must not be treated as part of any form prescribed by the regulations and may be reproduced in addition to any such form: reg 2(3). Where any such footnote requires any words to be omitted, those words must be omitted or deleted: reg 2(4). For the meaning of 'executed agreement' see para 115 note 3 ante; and for the meaning of 'unexecuted agreement' see para 115 note 9 ante. For the meaning of 'creditor' see para 81 note 2 ante; and for the meaning of 'owner' see para 82 note 1 ante. For the meaning of 'debtor' see para 81 note 3 ante; and for the meaning of 'hirer' see para 82 note 3 ante.

Where words are shown in capital letters in any form prescribed in regs 4, 5(1), (2)(a), (2)(b), Schedule Pts I-IV and are reproduced in copies of unexecuted or executed agreements they must be afforded more prominence (whether by capital letters, underlining, large or bold print or otherwise) than any other lettering in that form, except lettering inserted in accordance with reg 2(2), and no less prominence than that given to any other information in the copy apart from the heading to the agreement or copy, the annual percentage rate of charge for credit, trade names, names of parties to the agreement or lettering in the document inserted in handwriting: reg 2(5). Where words are shown in capital letters in any form prescribed in reg 6, Schedule Pt VI and are reproduced in notices of cancellation rights sent by post under the Consumer Credit Act 1974 s 64(1)(b) or s 64(2) (see para 183 post) they must be afforded more prominence (whether by capital letters, underlining, large or bold print or otherwise) than any other lettering in that form except lettering inserted in accordance with the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557, reg 2(2): reg 2(6).

- 8 For the meaning of 'security instrument' see para 200 post.
- 9 For the meaning of 'surety' see para 200 note 6 post.
- 10 Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557, reg 2(1).

11 Ibid reg 3(1). Special provision is made in relation to any copy of an executed agreement made before 19 May 1985 or of a security instrument relating to security provided before that date; a copy which is given to the debtor, hirer or surety under any provision of the Consumer Credit Act 1974 on or after that date may comprise an easily legible statement of the current terms of the agreement or security as the case may be in so far as they are known to the creditor or owner where, due to an accident or some other cause beyond his control, the creditor or owner does not have in his possession the executed agreement or security instrument or any copy of it: Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557, reg 9.

- 12 Ibid reg 3(2)(a).

13 In other than, in the case of a copy of a cancellable executed agreement delivered to the debtor under the Consumer Credit Act 1974 s 63(1) (see para 172 post), the date of signature by the debtor of an agreement to which s 68(b) applies (see para 184 note 2 post): Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557, reg 3(2)(b). For the meaning of 'cancellable agreement' see para 183 note 1 post.

14 In under the Consumer Credit Act 1974 s 62 (see para 171 post): see the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557, reg 3(2)(c).

- 15 Ibid reg 3(2)(c).

16 In under the Consumer Credit Act 1974 s 77(1) (as amended) for fixed-sum credit (see para 236 post), or under s 78(1) (as amended) for running-account credit (see para 237 post): see the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557, reg 3(2)(d) (as substituted: see note 17 infra). For the meaning of 'fixed-sum credit' see para 85 ante; and for the meaning of 'running-account credit' see para 84 ante.

- 17 Ibid reg 3(2)(d) (substituted by SI 1984/1108). As to pawn see para 208 et seq post.

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

174 Form and content of copies of agreements etc

TEXT AND NOTES 5-10--SI 1983/1557 reg 2(1) amended: SI 2004/3236.

NOTE 7--SI 1983/1557 reg 2(2), (6) amended: SI 2004/3236.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(4) COPIES/175. Consequences of failure to supply copies.

175. Consequences of failure to supply copies.

A regulated agreement¹ is not properly executed² if a copy³ is not supplied to all debtors and hirers⁴ as required⁵. The creditor⁶ may, however, apply to the court for an enforcement order⁷.

- 1 For the meaning of 'regulated agreement' see para 79 ante.
- 2 As to the consequences of improper execution see para 169 ante.
- 3 As to the meaning of 'copy' see para 174 text and note 4 ante.
- 4 As to the requirement that where there are two or more debtors or hirers anything required by or under the Consumer Credit Act 1974 to be done to or in relation to the debtor or hirer must be done to or in relation to each of them see s 185(1)(a); and para 98 ante. For the meaning of 'debtor' see para 81 note 3 ante; and for the meaning of 'hirer' see para 82 note 3 ante.
- 5 See ibid ss 62(3), 63(5); and paras 171-172 ante.
- 6 For the meaning of 'creditor' see para 81 note 2 ante.
- 7 See the Consumer Credit Act 1974 s 127; and para 169 ante. In the case of a cancellable agreement, the power to make an enforcement order is restricted where the requirements as to supply of copies are not complied with: see s 127(4); and para 169 head (1) ante. For the meaning of 'cancellable agreement' see para 183 note 1 post.

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

175 Consequences of failure to supply copies

NOTE 7--1974 Act s 127(4) repealed: Consumer Credit Act 2006 s 15.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(5) AGENCY/176. In general.

(5) AGENCY

176. In general.

Generally, under the common law relating to consumer credit, a dealer involved in arranging three-party agreements is not an agent of the finance house concerned¹. Under the Consumer Credit Act 1974, the common law rule is reversed for regulated consumer credit agreements² but not, it seems, for consumer hire agreements³.

Provisions of the Consumer Credit Act 1974 relating to credit-brokers⁴ are dealt with elsewhere in this title⁵.

1 As to the common law relating to consumer credit see paras 76-77 ante. See also AGENCY.

2 See the Consumer Credit Act 1974 s 56(1)(b), (c), (2); and para 177 post. For the meaning of 'consumer credit agreement' see para 81 ante. For the meaning of 'regulated' see para 79 ante. As to debtor-creditor-supplier agreements see para 87 ante.

3 The wording of the Consumer Credit Act 1974 is specific and does not extend to consumer hire agreements: see s 56(1)(b), (c), (2); and para 177 post. For the meaning of 'consumer hire agreement' see para 82 ante.

4 For the meaning of 'credit-broker' see para 94 ante.

5 See para 271 et seq post.

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(5) AGENCY/177. Negotiator as agent in antecedent negotiations.

177. Negotiator as agent in antecedent negotiations.

'Antecedent negotiations' means any negotiations with the debtor¹ or hirer² (1) conducted by the creditor³ or owner⁴ in relation to the making of any regulated agreement⁵; or (2) conducted by a credit-broker⁶ in relation to goods⁷ sold or proposed to be sold by the credit-broker to the creditor before forming the subject matter of a debtor-creditor-supplier agreement⁸; or (3) conducted by the supplier⁹ in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement¹⁰. 'Negotiator' means the person by whom negotiations are so conducted with the debtor or hirer¹¹. For the purposes of the Consumer Credit Act 1974, antecedent negotiations are taken (a) to begin when the negotiator and the debtor or hirer first enter into communication, including communication by advertisement¹²; and (b) to include any representations¹³ made by the negotiator to the debtor or hirer and any other dealings between them¹⁴.

Negotiations with the debtor in a case falling within head (2) or (3) above are deemed to be conducted by the negotiator in the capacity of agent¹⁵ of the creditor as well as in his actual capacity¹⁶.

An agreement is void if, and to the extent that, it purports in relation to an actual or prospective regulated agreement (i) to provide that a person acting as, or on behalf of, a negotiator is to be treated as the agent of the debtor or hirer¹⁷; or (ii) to relieve a person from liability for acts or omissions of any person acting as, or on behalf of, a negotiator¹⁸.

1 For the meaning of 'debtor' see para 81 note 3 ante.

2 For the meaning of 'hirer' see para 82 note 3 ante.

3 For the meaning of 'creditor' see para 81 note 2 ante.

4 For the meaning of 'owner' see para 82 note 1 ante.

5 Consumer Credit Act 1974 ss 56(1)(a), 189(1). See further s 188(1), Sch 2 Pt II examples 1, 4. For the meaning of 'regulated agreement' see para 79 ante.

6 For the meaning of 'credit-broker' see para 94 ante.

7 For the meaning of 'goods' see para 82 note 5 ante.

8 Ie within the Consumer Credit Act 1974 s 12(a) (see para 33 ante): ss 56(1)(b), 189(1). See further Sch 2 Pt II examples 2, 4. See also *Forthright Finance Ltd v Ingate* [1997] 4 All ER 99, CA. For the meaning of 'debtor-creditor-supplier agreement' see para 87 ante.

9 For the meaning of 'supplier' see para 86 note 8 ante. As to the supplier as agent for a leasing company see *Woodchester Leasing Equipment Ltd v Clayton (t/a Sudbury Sports)* [1994] CCLR 87.

10 Ie within the Consumer Credit Act 1974 s 12(b) or s 12(c) (see para 87 ante): ss 56(1)(c), 189(1). See further Sch 2 Pt II example 3. For the meaning of 'financed' see para 83 note 8 ante.

11 Ibid ss 56(1), 189(1). See further Sch 2 Pt II examples 1, 2, 3, 4. See also *Moorgate Mercantile Leasing Ltd v Gell and Ugolini Dispensers (UK) Ltd* [1988] CCLR 1. A dealer is not normally the agent of the creditor or owner: *Branwhite v Worcester Works Finance Ltd* [1969] 1 AC 552, [1968] 3 All ER 104, HL; *JD Williams & Co (t/a Williams Leasing) v McCauley Parsons & Jones* [1994] CCLR 78, CA; *Woodchester Equipment (Leasing) Ltd v British Association of Canned and Preserved Foods Importers and Distributors Ltd* [1995] CCLR 51, CA.

12 For the meaning of 'advertisement' see para 144 ante.

13 For the meaning of 'representation' see para 112 note 2 ante.

14 Consumer Credit Act 1974 s 56(4).

15 As to the duty of a person deemed to be an agent see para 178 post.

16 Consumer Credit Act 1974 s 56(2). See also *Forthright Finance Ltd v Ingate* [1997] 4 All ER 99, CA; *United Dominions Trust Ltd v Western* [1976] QB 513, [1975] 3 All ER 1017, CA; *Jarrett v Barclays Bank plc* [1997] 2 All ER 484, [1997] 3 WLR 654, CA. Although the negotiator, who is often the supplier, is deemed to be the agent of the creditor in antecedent negotiations under the Consumer Credit Act 1974, contrast the position at common law for unregulated agreements: see para 77 ante. For the meaning of 'unregulated' see para 79 ante.

17 Ibid s 56(3)(a).

18 Ibid s 56(3)(b).

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(5) AGENCY/178. Other provisions relating to agents.

178. Other provisions relating to agents.

Under the Consumer Credit Act 1974, a person is deemed in certain circumstances to be the agent¹ of the creditor² or owner³. Where a person is deemed to receive a notice⁴ or payment⁵ as agent⁶ of the creditor or owner under a regulated agreement⁷, he is deemed to be under a contractual duty to the creditor or owner to transmit the notice, or remit the payment, to him forthwith⁸.

A credit-broker⁹ may be an agent for certain purposes¹⁰.

A debtor¹¹ under a regulated hire-purchase agreement¹² or regulated conditional sale agreement¹³, and a hirer¹⁴ under a regulated consumer hire agreement¹⁵, may terminate the agreement by giving notice to any person entitled or authorised to receive the sums payable under the agreement¹⁶.

1 As to who is deemed to be an agent for the purpose of receiving a notice of intention to withdraw from a prospective agreement see the Consumer Credit Act 1974 ss 57(3); and para 181 post. As to who is deemed to be an agent for the purpose of receiving notice of cancellation see s 69(6); and para 185 post. As to who is deemed to be an agent for the purpose of receiving notice of rescission see s 102(1); and para 260 post. As to who is deemed to be an agent for the purpose of receiving repayments of credit and payments of interest see s 71(4); and para 187 ante. As to who is deemed to be an agent for the purpose of re-delivery of goods under a cancelled agreement see s 72(6); and para 188 ante.

2 For the meaning of 'creditor' see para 81 note 2 ante.

3 For the meaning of 'owner' see para 82 note 1 ante.

4 For the meaning of 'notice' see para 128 note 3 ante.

5 As to the meaning of 'payment' see para 84 note 5 ante.

6 See note 1 supra.

7 For the meaning of 'regulated agreement' see para 79 ante.

8 Consumer Credit Act 1974 s 175.

9 For the meaning of 'credit-broker' see para 94 ante.

10 As to credit-brokers see paras 94 ante, 271 et seq post.

11 For the meaning of 'debtor' see para 81 note 3 ante.

12 For the meaning of 'hire-purchase agreement' see para 95 ante.

13 For the meaning of 'conditional sale agreement' see para 93 ante.

14 For the meaning of 'hirer' see para 82 note 3 ante.

15 For the meaning of 'consumer hire agreement' see para 82 ante.

16 See the Consumer Credit Act 1974 ss 99(1), 101(1); and paras 257, 259 post.

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(6) EXCLUDED AGREEMENTS/179. Exclusions from provisions relating to entry into agreements.

(6) EXCLUDED AGREEMENTS

179. Exclusions from provisions relating to entry into agreements.

The provisions relating to entry into agreements¹ except those relating to antecedent negotiations² do not apply to (1) a non-commercial agreement³; or (2) a debtor-creditor agreement⁴ enabling the debtor⁵ to overdraw on a current account⁶; or (3) a debtor-creditor agreement to finance⁷ the making of such payments arising on, or connected with, the death of a person as may be prescribed⁸. Heads (2) and (3) above apply only where the Director General of Fair Trading⁹ so determines, and such a determination (a) may be made subject to such conditions as the director thinks fit¹⁰; and (b) may be made only if the director is of opinion that it is not against the interests of debtors¹¹.

The provisions relating to entry into agreements¹² except those relating to disclosure of information and antecedent negotiations¹³ do not apply to a small debtor-creditor-supplier agreement for restricted-use credit¹⁴.

1 le the Consumer Credit Act 1974 Pt V (ss 55-74) (as amended): see s 74(1).

2 le ibid s 56 (see para 177 ante): see s 74(1).

3 Ibid s 74(1)(a). For the meaning of 'non-commercial agreement' see para 107 ante.

4 For the meaning of 'debtor-creditor agreement' see para 87 ante.

5 For the meaning of 'debtor' see para 81 note 3 ante.

6 Consumer Credit Act 1974 s 74(1)(b). See further s 188(1), Sch 2 Pt II examples 17, 18.

7 For the meaning of 'finance' see para 83 note 8 ante.

8 Consumer Credit Act 1974 s 74(1)(c). For the meaning of 'prescribed' see para 114 note 8 ante. The Consumer Credit (Payments Arising on Death) Regulations 1983, SI 1983/1554, which came into operation on 19 May 1985 (see reg 1), prescribe the following payments for these purposes:

33 (1) capital transfer tax chargeable in the United Kingdom on the death of any person (see reg 2(a));

34 (2) fees payable to a court (a) in England, Wales or Northern Ireland, on an application for a grant of probate or of letters of administration; and (b) in the United Kingdom, on an application for resealing of a Commonwealth or colonial grant of probate or of letters of administration (see reg 2(b)); and

35 (3) payments in England, Wales or Northern Ireland to a surety in connection with a guarantee required as a condition of a grant of letters of administration (see reg 2(c)).

If any term of an agreement falling within the Consumer Credit Act 1974 s 74(1)(c) or s 74(2) (see the text and note 14 infra) is expressed in writing, regulations under s 60(1) (see para 161 ante) apply to that term (subject to s 60(3): see para 161 ante) as if the agreement was a regulated agreement not falling within s 74(1)(c) or s 74(2): s 74(4) (amended by the Banking Act 1979 s 38(1)). For the meaning of 'regulated agreement' see para 79 ante.

9 As to the Director General of Fair Trading see para 110 ante.

10 Consumer Credit Act 1974 s 74(3)(a). See further Sch 2 Pt II examples 17, 18.

11 Ibid s 74(3)(b). See further Sch 2 Pt II examples 17, 18. However, in relation to a debtor-creditor agreement under which the creditor is the Bank of England or a bank within the meaning of the Bankers' Books Evidence Act 1879 (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 907), the director must make a determination that the Consumer Credit Act 1974 s 74(1)(b) (see head (2) in the text and note 6 supra) applies unless he considers that it would be against the public interest to do so: s 74(3A) (added by the Banking Act 1979 s 38(1)).

As to the determinations made see the Determination dated 21 December 1989, made under the Consumer Credit Act 1974 s 74(1)(b); and the Determination dated 21 December 1989, made under s 74(1)(c).

12 See note 1 supra.

13 Ie the Consumer Credit Act 1974 ss 55, 56 (see paras 158, 177 ante): see s 74(2).

14 Ibid s 74(2). For the meaning of 'debtor-creditor-supplier agreement' see para 87 ante. For the meaning of 'restricted-use credit agreement' see para 86 ante. For the meaning of 'small agreement' generally see para 108 ante. In the case of an agreement to which the Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987, SI 1987/2117, apply (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) para 663 et seq), the definition of small agreement must be construed as if '£35' were substituted for '£50': Consumer Credit Act 1974 s 74(2A) (added by the Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987, SI 1987/2117, reg 9). See note 8 supra.

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

179 Exclusions from provisions relating to entry into agreements

TEXT AND NOTES--Consumer Credit Act 1974 s 74 amended: Enterprise Act 2002 Sch 25 para 6(25).

NOTE 14--Consumer Credit Act 1974 s 74(2A) amended, SI 1987/2117 replaced: Cancellation of Contracts made in a Consumer's Home or Place of Work etc Regulations 2008, SI 2008/1816.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(7) PROSPECTIVE AGREEMENTS/180. Agreement to enter prospective agreement.

(7) PROSPECTIVE AGREEMENTS

180. Agreement to enter prospective agreement.

An agreement may be void if, and to the extent that, it purports to bind a person to enter as debtor¹ or hirer² into a prospective regulated agreement³.

1 For the meaning of 'debtor' see para 81 note 3 ante.

2 For the meaning of 'hirer' see para 82 note 3 ante.

3 See the Consumer Credit Act 1974 s 59(1); and para 159 ante. Certain agreements are excluded: see s 59(2); the Consumer Credit (Agreements to enter Prospective Agreements) (Exemptions) Regulations 1983, SI 1983/1552; and para 159 ante.

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(7) PROSPECTIVE AGREEMENTS/181. Withdrawal from prospective agreements.

181. Withdrawal from prospective agreements.

The withdrawal¹ of a party from a prospective regulated agreement operates to apply Part V of the Consumer Credit Act 1974² to the agreement, any linked transaction³ and any other thing done in anticipation of the making of the agreement as it would apply if the agreement were made and then cancelled⁴. Where the agreement, if made, would not be a cancellable agreement⁵, these provisions nevertheless apply as if the contrary were the case⁶.

Special provision is made to ensure that the debtor or hirer has the opportunity to withdraw from a prospective land mortgage⁷.

1 The giving to a party of a written or oral notice which, however expressed, indicates the intention of the other party to withdraw from a prospective regulated agreement operates as a withdrawal from it: Consumer Credit Act 1974 s 57(2). For the purpose of receiving such a notice, each of the following is deemed to be the agent of the creditor or owner: (1) a credit-broker or supplier who is the negotiator in antecedent negotiations; (2) any person who, in the course of a business carried on by him, acts on behalf of the debtor or hirer in any negotiations for the agreement: s 57(3). For the meaning of 'notice' generally see para 128 note 3 ante. For the meaning of 'regulated agreement' see para 79 ante. For the meaning of 'creditor' see para 81 note 2 ante. For the meaning of 'owner' see para 82 note 1 ante. For the meaning of 'credit-broker' see para 94 ante. For the meaning of 'supplier' see para 86 note 8 ante. For the meaning of 'negotiator' and 'antecedent negotiations' see para 177 ante. For the meaning of 'business' see para 81 note 7 ante. For the meaning of 'debtor' see para 81 note 3 ante. For the meaning of 'hirer' see para 82 note 3 ante. As to the duty of a person deemed to be an agent see para 178 ante.

2 *Ie ibid Pt V (ss 55-74) (as amended) (provisions relating to entry into agreements: see para 157 et seq ante): see s 57(1).*

3 For the meaning of 'linked transaction' see para 196 post. See also para 90 ante.

4 *Ie under the Consumer Credit Act 1974 s 69 (see para 185 post): s 57(1). See also Financings Ltd v Stimson [1962] 3 All ER 386, [1962] 1 WLR 1184. As to cancellation see para 183 et seq post.*

5 For the meaning of 'cancellable agreement' see para 183 note 1 post.

6 Consumer Credit Act 1974 s 57(4).

7 See *ibid* s 58; and para 182 post. For the meaning of 'land' see para 93 note 2 ante.

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(7) PROSPECTIVE AGREEMENTS/182. Withdrawal from prospective land mortgage.

182. Withdrawal from prospective land mortgage.

Before sending to the debtor¹ or hirer², for his signature, an unexecuted agreement³ in a case where the prospective regulated agreement⁴ is to be secured on land⁵ (known as the 'mortgaged land'), the creditor⁶ or owner⁷ must give the debtor or hirer a copy⁸ of the unexecuted agreement which contains a notice in the prescribed form⁹ indicating the right of the debtor or hirer to withdraw from the prospective agreement, and how and when the right is exercisable, together with a copy of any other document referred to in the unexecuted agreement¹⁰. However, this does not apply to (1) a restricted-use credit agreement¹¹ to finance the purchase of the mortgaged land¹²; or (2) an agreement for a bridging loan in connection with the purchase of the mortgaged land or other land¹³.

1 For the meaning of 'debtor' see para 81 note 3 ante.

2 For the meaning of 'hirer' see para 82 note 3 ante.

3 For the meaning of 'unexecuted agreement' see para 115 note 9 ante.

4 For the meaning of 'regulated agreement' see para 79 ante.

5 For the meaning of 'land' see para 93 note 2 ante.

6 For the meaning of 'creditor' see para 81 note 2 ante.

7 For the meaning of 'owner' see para 82 note 1 ante.

8 As to the meaning of 'copy' see para 174 text and note 4 ante.

9 For the meaning of 'prescribed' see para 114 note 8 ante. The prescribed form is set out in the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557, reg 4, Schedule Pt I (as amended). Where the agreement is one to which the Consumer Credit Act 1974 s 58(1) applies, every copy of the unexecuted agreement given to a debtor or hirer under s 58(1) must include (1) a heading in the specified form (see the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557, reg 4(a), Schedule Pt I Form 1) shown prominently on the first page of the copy, instead of any heading referred to in the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, regs 2(1), 3(1), Sch 1 para 1, Sch 3 para 1 (see paras 163, 165 ante); and (2) a box containing only a notice indicating the right of the debtor or hirer to withdraw from the prospective agreement, and how and when the right is exercisable, in the specified form (see the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557, reg 4(b), Schedule Pt I Form 2 (Form 2 substituted by SI 1988/2047)), instead of any statement of the rights of the debtor or hirer referred to in the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 2(3) (as amended), reg 3(3), Sch 2 Form 1, Sch 4 Form 1 (see paras 162, 164 ante): Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557, reg 4.

10 Consumer Credit Act 1974 s 58(1). See also *National Guardian Mortgage Corp v Wilkes* [1993] CCLR 1.

As to the proper execution of an agreement to which the Consumer Credit Act 1974 s 58(1) applies see s 61(2), (3); and para 160 ante.

11 For the meaning of 'restricted-use credit agreement' see para 86 ante.

12 Consumer Credit Act 1974 s 58(2)(a). For the meaning of 'finance' see para 83 note 8 ante.

13 Ibid s 58(2)(b).

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

182 Withdrawal from prospective land mortgage

NOTE 9--SI 1983/1557 reg 4(a) amended: SI 2004/3236.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(8) CANCELLABLE AGREEMENTS/183. Notice of cancellation rights.

(8) CANCELLABLE AGREEMENTS

183. Notice of cancellation rights.

In the case of a cancellable agreement¹, a notice² in the prescribed form³ must be included in every copy of the agreement⁴ and except in certain circumstances⁵ a notice must also be sent by post to the debtor or hirer within the seven days following the making of the agreement⁶. The notice must indicate the right of the debtor or hirer to cancel the agreement, how and when that right is exercisable, and the name and address of a person to whom notice of cancellation⁷ may be given⁸. A cancellable agreement is not properly executed if these requirements are not observed⁹.

An improperly executed regulated agreement¹⁰ is enforceable against the debtor or hirer on an order of the court¹¹ only¹². In the case of a cancellable agreement, the court must not make an enforcement order if (1) the duty to supply copies¹³ was not complied with, and the creditor or owner did not give a copy of the executed agreement, and of any other document referred to in it, to the debtor or hirer before the commencement of the proceedings in which the enforcement order is sought; or (2) the duty to give notice of cancellation rights¹⁴ was not complied with¹⁵.

1 'Cancellable agreement' means a regulated agreement which, by virtue of the Consumer Credit Act 1974 s 67 (see para 184 post) may be cancelled by the debtor or hirer: s 189(1). See further s 188(1), Sch 2 Pt II example 4. For the purposes of the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557 (as amended), 'cancellable agreement' includes an agreement which is a modifying agreement treated as a cancellable agreement under the Consumer Credit Act 1974 s 82(5) (see para 191 post): Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557, reg 1(2). For the meaning of 'regulated agreement' see para 79 ante. For the meaning of 'debtor' see para 81 note 3 ante; and for the meaning of 'hirer' see para 82 note 3 ante. As to the meaning of 'modifying agreement' see para 191 post.

2 For the meaning of 'notice' see para 128 note 3 ante.

3 For the meaning of 'prescribed' see para 114 note 8 ante. The prescribed form is set out in the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557, reg 5, Schedule (as amended).

Every copy of a cancellable unexecuted agreement delivered or sent to a debtor or hirer under the Consumer Credit Act 1974 s 62 (see para 171 ante) or of a cancellable executed agreement delivered to him under s 63(1) (see para 172 ante) must include a box containing only a notice indicating the right of the debtor or hirer to cancel the agreement, and how and when that right is exercisable, in the form specified as appropriate to the type of agreement (see the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557, reg 5(1), Schedule Pt II Forms 3-9 (Forms 3-8 substituted by SI 1988/2047)), instead of any statement of the rights of the debtor or hirer referred to in the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 2(3) (as amended), reg 3(3), Sch 2 Forms 2-4 (Form 2 as substituted), Sch 4 Forms 2, 3 (see paras 162, 164 ante): Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557, reg 5(1). As to the meaning of 'copy' see para 174 text and note 4 ante. For the meaning of 'unexecuted agreement' see para 115 note 9 ante; and for the meaning of 'executed agreement' see para 115 note 3 ante.

Every copy of a cancellable executed agreement sent by post to the debtor or hirer under the Consumer Credit Act 1974 s 63(2) (see para 172 ante) within the seven days following the making of the agreement or under s 63(4) (see para 172 ante) must include (1) a box containing only a notice indicating the right of the debtor or hirer to cancel the agreement, and how and when that right is exercisable, in the form specified as appropriate to the type of agreement (see the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557, reg 5(2)(a), Schedule Pt III Forms 10-15 (Forms 10-14 substituted by SI 1988/2047)), instead of any statement of the rights of the debtor or hirer referred to in the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 2(3) (as amended), reg 3(3), Sch 2 Forms 2-4 (Form 2 as substituted), Sch

4 Forms 2, 3 (see paras 162, 164 ante); and (2) a cancellation form which must be in the specified form (see the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557, reg 5(2)(b), Schedule Pt IV Form 16): reg 5(2).

Where a notice indicating the right of the debtor or hirer to cancel a cancellable unexecuted or executed agreement does not appear prominently on the first page of any copy of such an agreement delivered or sent to the debtor or hirer under the Consumer Credit Act 1974 s 62 or s 63 (see paras 171-172 ante), the copy must include on its first page a box containing only a statement in the specified form (see the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557, reg 5(3), Schedule Pt V Form 17): reg 5(3).

In the case of (a) an unexecuted agreement a copy of which is required to be delivered or sent to a debtor or hirer under the Consumer Credit Act 1974 s 62 (see para 171 ante); (b) an executed agreement a copy of which is required to be delivered to a debtor or hirer under s 63(1) (see para 172 ante); or (c) an executed agreement a copy of which is required to be given to a debtor or hirer under s 63(2) or s 63(4) (see para 172 ante), which is not a cancellable agreement within the meaning of these provisions but which may be cancelled by the debtor or hirer in accordance with terms of the agreement conferring upon him similar rights as if the agreement were such a cancellable agreement, the agreement may be treated for the purposes of the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557, reg 5 as if it were a cancellable agreement within the meaning of these provisions, and reg 2 (see para 174 ante) then applies as if the agreement were such a cancellable agreement: reg 5(4) (added by SI 1984/1108).

4 Ie in every copy of the agreement given to the debtor or hirer under the Consumer Credit Act 1974 s 62 or s 63 (see paras 171-172 ante): see s 64(1)(a).

5 Ie except where ibid s 63(2) applied (see para 172 ante): see s 64(1)(b).

6 Ibid s 64(1)(a), (b). See also *Moorgate Services Ltd v Kabir* [1995] CCLR 74.

In the case of a credit-token agreement, a notice under the Consumer Credit Act 1974 s 64(1)(b) need not be sent by post within the seven days following the making of the agreement if either it is sent by post to the debtor or hirer before the credit-token is given to him, or it is sent by post to him together with the credit-token: s 64(2). For the meaning of 'credit-token agreement' and 'credit-token' see para 88 ante.

Any notice which indicates the right of the debtor or hirer to cancel a cancellable agreement, and how and when that right is exercisable, and which is sent by post to the debtor or hirer under s 64(1)(b) within the seven days following the making of the agreement or under s 64(2), must be (1) in the form specified as appropriate to the type of agreement (see the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557, reg 6(a), Schedule Pt VI Forms 18-23 (Forms 18-22 substituted by SI 1988/2047)); and (2) on a single sheet of paper: see the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557, reg 6. If the notice is entirely on one side of the paper, the cancellation form forming part of that notice must be on that side; but if the notice is continued on the back of the paper, the symbol and word '/over' must be shown below that part of the text which appears on the front of the paper: see reg 6(b).

Regulations may provide that except where the Consumer Credit Act 1974 s 63(2) applied (see para 172 ante) a notice sent under s 64(1)(b) must be accompanied by a further copy of the executed agreement, and of any other document referred to in it: s 64(3). For the meaning of 'regulations' see para 114 note 2 ante.

Regulations may also provide that s 64(1)(b) is not to apply in the case of agreements such as are described in the regulations, being agreements made by a particular person, if (a) on an application by that person to the Director General of Fair Trading, the director has determined that, having regard to the manner in which antecedent negotiations for agreements with the applicant of that description are conducted and the information provided to debtors or hirers before such agreements are made, the requirement imposed by s 64(1)(b) can be dispensed with without prejudicing the interests of debtors or hirers; and (b) any conditions imposed by the director in making the determination are complied with: s 64(4). The Consumer Credit (Notice of Cancellation Rights) (Exemptions) Regulations 1983, SI 1983/1558, which came into operation on 19 May 1985 (see reg 1), provide that the Consumer Credit Act 1974 s 64(1)(b) is not to apply in the case of regulated agreements which satisfy all the following conditions, namely agreements:

- 36 (i) which finance the supply of goods by the creditor to the debtor (see the Consumer Credit (Notice of Cancellation Rights) (Exemptions) Regulations 1983, SI 1983/1558 reg 2, Schedule para 1);
- 37 (ii) in relation to the making of which antecedent negotiations have been conducted that include the circulation of circulars, catalogues, brochures, price lists or audio-visual materials which (A) contain the information specified in the Consumer Credit (Advertisements) Regulations 1980, SI 1980/54 (revoked: see now the Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125; and para 145 et seq ante); and (B) contain or are accompanied by a prominent notice indicating that the relevant printed or audio-visual material is available to the debtor to study in the absence of the negotiator before signing the unexecuted agreement (see the

Consumer Credit (Notice of Cancellation Rights) (Exemptions) Regulations 1983, SI 1983/1558, Schedule para 2);

- 38 (iii) under which goods supplied may be returned to the creditor within 14 days of their receipt by the debtor without the debtor incurring any liability, other than any liability which may arise from the failure of the debtor to take reasonable care of the goods while they are in his possession (see Schedule para 3); and
- 39 (iv) on the making of which it is in the contemplation of the parties to the agreement that the creditor, or an agent of the creditor, or the negotiator may visit the debtor from time to time, and will maintain continuity of contact with him, during the duration of the agreement in relation to the collection of payments due under the agreement (see Schedule para 4).

As to the Director General of Fair Trading see para 110 ante. As to applications to the director see para 111 ante. For the meaning of 'antecedent negotiations' see para 177 ante. For the meaning of 'regulated agreement' see para 79 ante. For the meaning of 'finance' see para 83 note 8 ante. For the meaning of 'goods' see para 82 note 5 ante. For the meaning of 'creditor' see para 81 note 2 ante. For the meaning of 'negotiator' see para 177 ante.

- 7 For the meaning of 'notice of cancellation' see para 185 post.
- 8 Consumer Credit Act 1974 s 64(1). As to the right to cancel a regulated agreement see para 184 post.
- 9 *Ibid* s 64(5).

10 As to the circumstances in which an agreement is not properly executed see paras 158, 160 et seq ante. As to the terms which must be contained in a document if a regulated agreement is not to be improperly executed see paras 167-168 ante.

- 11 For the meaning of 'court' see para 134 note 9 ante.
- 12 See the Consumer Credit Act 1974 s 65(1); and para 169 ante.
- 13 See *ibid* ss 62, 63; and paras 171-172 ante. As to the meaning of 'copy' see para 174 text and note 4 ante.
- 14 See the text and note 6 supra.
- 15 See the Consumer Credit Act 1974 s 127(4); and para 169 ante. See also *Southern and District Finance plc v Barnes* [1995] CCLR 62 (failure to give notice of cancellation rights).

As to enforcement generally see para 290 post.

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

183 Notice of cancellation rights

TEXT AND NOTES 1-9--1974 Act s 64 amended: Enterprise Act 2002 Sch 25 para 6(24); Consumer Credit Act 1974 (Electronic Communications) Order 2004, SI 2004/3236. See also the 1974 Act s 176A (electronic transmission of documents) (added by SI 2004/3236).

NOTE 3--SI 1983/1557 reg 5(1) amended, Schedule Pts II, III, VI substituted: SI 2004/2619. SI 1983/1557 reg 5(2) amended: SI 2004/2619, SI 2004/3236. SI 1983/1557 Schedule Pt IV Form 16 amended, reg 5(2A) (inclusion of information about the use of electronic communication) added: SI 2004/3236.

NOTE 6--SI 1983/1557 reg 6 amended: SI 2004/3236. See also regs 6A, 6B (added by SI 2004/3236).

NOTE 15--1974 Act s 127(4) repealed: Consumer Credit Act 2006 s 15.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(8) CANCELLABLE AGREEMENTS/184. The right to cancel.

184. The right to cancel.

A regulated agreement¹ may be cancelled² by the debtor or hirer if the antecedent negotiations³ included oral representations⁴ made when in the presence of the debtor or hirer by an individual⁵ acting as, or on behalf of, the negotiator⁶, unless (1) the agreement is secured on land⁷, or is a restricted-use credit agreement⁸ to finance⁹ the purchase of land or is an agreement for a bridging loan in connection with the purchase of land¹⁰; or (2) the unexecuted agreement is signed by the debtor or hirer at premises at which any of the following is carrying on any business¹¹, whether on a permanent or temporary basis:

- 81 (a) the creditor or owner¹²;
- 82 (b) any party to a linked transaction¹³, other than the debtor or hirer or a relative of his¹⁴;
- 83 (c) the negotiator in any antecedent negotiations¹⁵.

1 For the meaning of 'regulated agreement' see para 79 ante.

2 Ie in accordance with the Consumer Credit Act 1974 Pt V (ss 55-74) (as amended): see s 67.

The debtor or hirer may serve notice of cancellation of a cancellable agreement between his signing of the unexecuted agreement and (1) the end of the fifth day following the day on which he received a copy under s 63(2) (see para 172 ante) or a notice under s 64(1)(b) (see para 183 ante); or (2) if, by virtue of regulations made under s 64(4) (see para 183 ante), s 64(1)(b) (see para 183 ante) does not apply, the end of the fourteenth day following the day on which he signed the unexecuted agreement: s 68(a), (b). This is sometimes referred to as the 'cooling-off period'. For the meaning of 'debtor' see para 81 note 3 ante. For the meaning of 'hirer' see para 82 note 3 ante. For the meaning of 'notice of cancellation' see para 185 post. For the meaning of 'notice' see para 128 note 3 ante. For the meaning of 'cancellable agreement' see para 183 note 1 ante. For the meaning of 'unexecuted agreement' see para 115 note 9 ante.

3 For the meaning of 'antecedent negotiations' see para 177 ante.

4 As to the meaning of 'representation' see para 112 note 2 ante. As to representations see *Moorgate Services Ltd v Kabir* [1995] CCLR 74, CA.

5 For the meaning of 'individual' see para 180 note 1 ante.

6 For the meaning of 'negotiator' see para 177 ante.

7 For the meaning of 'land' see para 93 note 2 ante.

8 For the meaning of 'restricted-use credit agreement' see para 86 ante.

9 For the meaning of 'finance' see para 83 note 8 ante.

10 Consumer Credit Act 1974 s 67(a).

11 For the meaning of 'business' see para 81 note 7 ante.

12 Consumer Credit Act 1974 s 67(b)(i). See further s 188(1), Sch 2 Pt II example 4. For the meaning of 'creditor' see para 81 note 2 ante. For the meaning of 'owner' see para 82 note 1 ante.

13 For the meaning of 'linked transaction' see para 196 post. See also para 90 ante.

14 Consumer Credit Act 1974 s 67(b)(ii). See further Sch 2 Pt II example 4. For the meaning of 'relative' see para 116 note 12 ante.

15 Ibid s 67(b)(iii). See further Sch 2 Pt II example 4.

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(8) CANCELLABLE AGREEMENTS/185. Notice of cancellation.

185. Notice of cancellation.

If the debtor¹ or hirer² under a cancellable agreement³ serves⁴ on (1) the creditor or owner⁵; or (2) the person specified in the notice of cancellation rights⁶; or (3) a person who is the agent of the creditor or owner⁷, a notice (a 'notice of cancellation'⁸) which indicates⁹ the intention of the debtor or hirer to withdraw from the agreement, the notice operates (a) to cancel the agreement, and any linked transaction¹⁰; and (b) to withdraw any offer by the debtor or hirer, or his relative¹¹, to enter into a linked transaction¹². An agreement or transaction cancelled under this provision must be treated as if it had never been entered into¹³.

In the case of a debtor-creditor-supplier agreement¹⁴ for restricted-use credit¹⁵ financing¹⁶ (i) the doing of work or supply of goods to meet an emergency¹⁷; or (ii) the supply of goods which, before service of the notice of cancellation, had by the act of the debtor or his relative become incorporated in any land or thing not comprised in the agreement or any linked transaction¹⁸, the above provisions¹⁹ apply, except that a notice of cancellation operates to cancel only such provisions of the agreement and any linked transaction as (A) relate to the provision of credit; or (B) require the debtor to pay an item in the total charge for credit²⁰; or (C) subject the debtor to any obligation other than to pay for the doing of the said work, or the supply of the said goods²¹.

Where a regulated agreement or linked transaction is cancelled or becomes subject to these provisions, an interested party may apply for a declaration to that effect²².

1 For the meaning of 'debtor' see para 81 note 3 ante.

2 For the meaning of 'hirer' see para 82 note 3 ante.

3 For the meaning of 'cancellable agreement' see para 183 note 1 ante.

4 Ie within the cooling-off period specified in the Consumer Credit Act 1974 s 68 (see para 184 note 2 ante); see s 69(1). Whether or not it is actually received by him, a notice of cancellation (see the text and note 8 infra) sent by post to a person must be deemed to be served on him at the time of posting: s 69(7). As to service of documents generally see para 314 post.

5 Ibid s 69(1)(a). For the meaning of 'creditor' see para 81 note 2 ante. For the meaning of 'owner' see para 82 note 1 ante. For the purpose of receiving a notice of cancellation (see the text and note 8 infra), each of the following must be deemed to be the agent of the creditor or owner: (1) a credit-broker or supplier who is the negotiator in antecedent negotiations; and (2) any person who, in the course of a business carried on by him, acts on behalf of the debtor or hirer in any negotiations for the agreement: s 69(6)(a), (b). For the meaning of 'credit-broker' see para 94 ante. For the meaning of 'supplier' see para 86 note 8 ante. For the meaning of 'negotiator', and of 'antecedent negotiations', see para 177 ante. For the meaning of 'business' see para 81 note 7 ante. As to the duty of a person deemed to be an agent see para 178 ante.

6 Ie under ibid s 64(1) (see para 183 ante): s 69(1)(b). For the meaning of 'notice' see para 128 note 3 ante.

7 Ie whether by virtue of ibid s 69(6) (see note 5 supra) or otherwise: s 69(1)(c).

8 See ibid ss 69(1), 189(1).

9 Ie however expressed and whether or not conforming to the notice given under ibid s 64(1): see s 69(1).

10 Ibid s 69(1)(i). For the meaning of 'linked transaction' see para 196 post. See also para 90 ante. See note 12 infra.

11 For the meaning of 'relative' see para 116 note 12 ante.

12 Consumer Credit Act 1974 s 69(1)(ii). Regulations may exclude linked transactions of the prescribed description from s 69(1)(i) (see the text and note 10 supra) or s 69(1)(ii): s 69(5). As to excluded linked transactions see the Consumer Credit (Linked Transactions) (Exemptions) Regulations 1983, SI 1983/1560; and para 198 post. For the meaning of 'regulations' see para 114 note 2 ante. For the meaning of 'prescribed' see para 114 note 8 ante.

13 ie except as otherwise provided by or under the Consumer Credit Act 1974: s 69(4).

14 For the meaning of 'debtor-creditor-supplier agreement' see para 87 ante.

15 For the meaning of 'restricted-use credit agreement' see para 86 ante.

16 For the meaning of 'finance' see para 83 note 8 ante.

17 Consumer Credit Act 1974 s 69(2)(a). For the meaning of 'goods' see para 82 note 5 ante.

18 Ibid s 69(2)(b). For the meaning of 'land' see para 93 note 2 ante.

19 ie ibid s 69(1): see s 69(2).

20 As to the total charge for credit see paras 91 ante, 224 et seq post.

21 See the Consumer Credit Act 1974 s 69(1)(i), (2). Except so far as is otherwise provided, references in the Consumer Credit Act 1974 to the cancellation of an agreement or transaction do not include a case within s 69(2): s 69(3).

22 See ibid s 142(2)(a); and para 291 post.

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

185 Notice of cancellation

NOTE 4--1974 Act s 69(7) substituted: Consumer Credit Act 1974 (Electronic Communications) Order 2004, SI 2004/3236. See also the 1974 Act s 176A (electronic transmission of documents) (added by SI 2004/3236).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(8) CANCELLABLE AGREEMENTS/186. Recovery of money paid.

186. Recovery of money paid.

On the cancellation of a regulated agreement¹, and of any linked transaction², (1) any sum paid by the debtor³ or hirer⁴, or his relative⁵, under or in contemplation of the agreement or transaction, including any item in the total charge for credit⁶, becomes repayable⁷; and (2) any sum, including any item in the total charge for credit, which but for the cancellation is, or would or might become, payable by the debtor or hirer, or his relative, under the agreement or transaction ceases to be, or does not become, so payable⁸; and (3) in the case of a debtor-creditor-supplier agreement⁹ any sum paid on the debtor's behalf by the creditor¹⁰ to the supplier¹¹ becomes repayable to the creditor¹². However, this provision¹³ does not apply to any sum which, if not paid by a debtor, would be payable by virtue of the provisions relating to repayment of credit¹⁴, and applies to a sum paid or payable by a debtor for the issue of a credit-token¹⁵ only where the credit-token has been returned to the creditor or surrendered to a supplier¹⁶.

If, under the terms of a cancelled agreement or transaction, the debtor or hirer, or his relative, is in possession of any goods¹⁷, he has a lien¹⁸ on them for any sum repayable to him¹⁹ in respect of that agreement or transaction, or any other linked transaction²⁰.

1 For the meaning of 'regulated agreement' see para 79 ante. So far only as is necessary to give effect to the Consumer Credit Act 1974 s 69(2) (see para 185 ante), s 70 applies to an agreement or transaction within s 69(2) as it applies to a cancelled agreement or transaction: s 70(8).

2 For the meaning of 'linked transaction' see para 196 post. See also para 90 ante.

3 For the meaning of 'debtor' see para 81 note 3 ante.

4 For the meaning of 'hirer' see para 82 note 3 ante.

5 For the meaning of 'relative' see para 116 note 12 ante.

6 As to the total charge for credit see paras 91 ante, 224 et seq post. If the total charge for credit includes an item in respect of a fee or commission charged by a credit-broker, the amount repayable under the Consumer Credit Act 1974 s 70(1) in respect of that item is the excess over £5 of the fee or commission: s 70(6) (amended by the Consumer Credit (Further Increase of Monetary Amounts) Order 1998, SI 1998/997, art 3, Schedule). If the total charge for credit includes any sum payable or paid by the debtor to a credit-broker otherwise than in respect of a fee or commission charged by him, that sum must be treated for the purposes of the Consumer Credit Act 1974 s 70(6) (as amended) as if it were such a fee or commission: s 70(7). For the meaning of 'credit-broker' see para 94 ante.

7 Ibid s 70(1)(a). A sum repayable under s 70(1) is repayable by the person to whom it was originally paid (but see also note 12 infra); see s 70(3). As to recovery of a deposit see *Branwhite v Worcester Works Finance Ltd* [1969] 1 AC 552, [1968] 3 All ER 104.

8 Consumer Credit Act 1974 s 70(1)(b).

9 ie falling within ibid s 12(b) (see para 87 ante): see s 70(1)(c). For the meaning of 'debtor-creditor-supplier agreement' see para 87 ante.

10 For the meaning of 'creditor' see para 81 note 2 ante.

11 For the meaning of 'supplier' see para 86 note 8 ante.

12 Consumer Credit Act 1974 s 70(1)(c). In the case of a debtor-creditor-supplier agreement falling within s 12(b) (see para 87 ante), the creditor and the supplier are under a joint and several liability to repay sums paid by the debtor, or his relative, under the agreement or under a linked transaction falling within s 19(1)(b) (see

para 196 post); and accordingly, in such a case, the creditor is entitled, in accordance with the rules of court, to have the supplier made a party to any proceedings brought against the creditor to recover any such sums: see s 70(3). Subject to any agreement between them, the creditor is entitled to be indemnified by the supplier for loss suffered by the creditor in satisfying his liability under s 70(3), including costs reasonably incurred by him in defending proceedings instituted by the debtor: s 70(4). 'Rules of court' means, in relation to the High Court in Northern Ireland, rules made under the Northern Ireland Act 1962 s 7 (repealed: see now the Judicature (Northern Ireland) Act 1978 s 55 (as amended)) and, in relation to any other court, rules made by the authority having for the time being power to make rules regulating the practice and procedure in that court: see the Consumer Credit Act 1974 s 189(1); and the Interpretation Act 1978 s 5, Sch 1. For the meaning of 'High Court' see para 142 note 3 ante. For the meaning of 'court' see para 134 note 9 ante.

- 13 le the Consumer Credit Act 1974 s 70(1): see s 70(5).
- 14 le ibid s 71 (see para 187 post): see s 70(5).
- 15 For the meaning of 'credit-token' see para 88 ante.
- 16 Consumer Credit Act 1974 s 70(5).
- 17 For the meaning of 'goods' see para 82 note 5 ante.
- 18 As to lien generally see LIEN.
- 19 le under the Consumer Credit Act 1974 s 70(1): see s 70(2).
- 20 Ibid s 70(2).

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(8) CANCELLABLE AGREEMENTS/187. Repayment of credit.

187. Repayment of credit.

Notwithstanding the cancellation of a regulated consumer credit agreement¹, other than a debtor-creditor-supplier agreement² for restricted-use credit³, the agreement continues in force so far as it relates to repayment of credit and payment of interest⁴.

If, following the cancellation of a regulated consumer credit agreement, the debtor⁵ repays the whole or a portion of the credit (1) before the expiry of one month following service of the notice of cancellation⁶; or (2) in the case of a credit repayable by instalments, before the date on which the first instalment is due⁷, no interest is payable on the amount repaid⁸.

Repayment of a credit, or payment of interest, under a cancelled agreement must be treated as duly made if it is made to any person⁹ on whom a notice of cancellation could have been served¹⁰.

1 For the meaning of 'consumer credit agreement' see para 81 ante. For the meaning of 'regulated' see para 79 ante.

2 For the meaning of 'debtor-creditor-supplier agreement' see para 87 ante.

3 For the meaning of 'restricted-use credit agreement' see para 86 ante.

4 Consumer Credit Act 1974 s 71(1).

5 For the meaning of 'debtor' see para 81 note 3 ante.

6 Consumer Credit Act 1974 s 71(2)(a). For the meaning of 'notice of cancellation' see para 185 ante.

7 *Ibid* s 71(2)(b). If the whole of a credit repayable by instalments is not repaid on or before the date specified in s 71(2)(b), the debtor is not liable to repay any of the credit except on receipt of a request in writing in the prescribed form, signed by or on behalf of the creditor, stating the amounts of the remaining instalments, but excluding any sum other than principal and interest: s 71(3). The amounts of the remaining instalments must be recalculated by the creditor as nearly as may be in accordance with the agreement and without extending the repayment period: s 71(3). For the meaning of 'creditor' see para 81 note 2 ante. For the meaning of 'prescribed' see para 114 note 8 ante.

The prescribed form is set out in the Consumer Credit (Repayment of Credit on Cancellation) Regulations 1983, SI 1983/1559, which came into operation on 19 May 1985 (see reg 1).

Any request in writing, to be given to a debtor under the Consumer Credit Act 1974 s 71(3), for repayment of credit following the cancellation of a regulated consumer credit agreement must contain specified information: see the Consumer Credit (Repayment of Credit on Cancellation) Regulations 1983, SI 1983/1559, reg 2(1). The specified information is: (1) a description of the cancelled agreement sufficient to identify it; (2) the name and a postal address of the creditor; (3) the name and a postal address of the debtor; (4) the amount of credit received by the debtor under the agreement; (5) the date when the first instalment was due under the agreement; (6) the amount of credit repaid by the debtor before that date, or a statement that none of the credit was repaid before that date; (7) the amounts of the remaining instalments (recalculated in accordance with the Consumer Credit Act 1974 s 71(3)) which the debtor is required to pay, ie excluding any sum other than principal and interest; (8) a precise indication of the dates on which the instalments are due or a statement indicating clearly the manner in which those dates will be determined; (9) a clear and unambiguous statement by the creditor that payment of the amounts of the remaining instalments is demanded on the dates indicated: Consumer Credit (Repayment of Credit on Cancellation) Regulations 1983, SI 1983/1559, reg 2(1), Sch 1.

Any request in writing, to be given to a debtor under the Consumer Credit Act 1974 s 71(3) (as applied by s 57: see para 181 ante), for repayment of credit following the withdrawal of a party from a prospective regulated consumer credit agreement must contain specified information: see the Consumer Credit (Repayment of Credit on Cancellation) Regulations 1983, SI 1983/1559, reg 2(2). The specified information is: (a) a description of the prospective agreement sufficient to identify it; (b) the name and a postal address of the creditor; (c) the name

and a postal address of the debtor; (d) the amount of credit received by the debtor under the prospective agreement; (e) the date when the first instalment would have been due under the agreement if the prospective agreement had been made at the same time as the credit, or the first part of the credit as the case may be, was provided; (f) the amount of credit repaid by the debtor before that date, or a statement that none of the credit was repaid before that date; (g) the amounts of the remaining instalments (recalculated in accordance with the Consumer Credit Act 1974 ss 57, 71(3)) which the debtor is required to pay, ie excluding any sum other than principal and interest; (h) a precise indication of the dates on which the instalments are due or a statement indicating clearly the manner in which those dates will be determined; (i) a clear and unambiguous statement by the creditor that payment of the amounts of the remaining instalments is demanded on the dates indicated: Consumer Credit (Repayment of Credit on Cancellation) Regulations 1983, SI 1983/1559, reg 2(2), Sch 2.

- 8 Consumer Credit Act 1974 s 71(2).
- 9 ie other than a person referred to in ibid s 69(6)(b) (see para 185 note 5 head (2) ante): see s 71(4).
- 10 ie under ibid s 69 (see para 185 ante): s 71(4).

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

187 Repayment of credit

NOTE 7--SI 1983/1559 Schs 1, 2 amended: SI 2004/3236.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(8) CANCELLABLE AGREEMENTS/188. Return of goods.

188. Return of goods.

The provisions concerning return of goods¹ apply where any agreement or transaction relating to goods, being (1) a restricted-use debtor-creditor-supplier agreement², a consumer hire agreement³, or a linked transaction⁴ to which the debtor⁵ or hirer⁶ under any regulated agreement⁷ is a party⁸; or (2) a linked transaction to which a relative⁹ of the debtor or hirer under any regulated agreement is a party¹⁰, is cancelled after the debtor or hirer, in a case within head (1) above, or the relative, in a case within head (2) above, has acquired possession of the goods by virtue of the agreement or transaction¹¹.

The possessor¹² must be treated as having been under a duty throughout the pre-cancellation period¹³ to retain possession of the goods and to take reasonable care of them¹⁴. On the cancellation, the possessor is under a duty, subject to any lien¹⁵, to restore the goods to the other party¹⁶ in accordance with these provisions, and meanwhile to retain possession of the goods and take reasonable care of them¹⁷. The possessor is not under any duty to deliver the goods except at his own premises and in pursuance of a request in writing signed by or on behalf of the other party and served on the possessor either before, or at the time when, the goods are collected from those premises¹⁸. If the possessor (a) delivers the goods, whether at his own premises or elsewhere, to any person¹⁹ on whom a notice of cancellation could have been served²⁰; or (b) sends the goods at his own expense to such a person²¹, he is discharged from any duty to retain the goods or deliver them to any person²².

Breach of a duty imposed by these provisions²³ is actionable as a breach of statutory duty²⁴.

1 Ie the Consumer Credit Act 1974 s 72: see s 72(1). For the meaning of 'goods' see para 82 note 5 ante. The provisions of s 72 do not apply to (1) perishable goods; or (2) goods which by their nature are consumed by use and which, before the cancellation, were so consumed; or (3) goods supplied to meet an emergency; or (4) goods which, before the cancellation, had become incorporated in any land or thing not comprised in the cancelled agreement or a linked transaction: s 72(9). For the meaning of 'land' see para 93 note 2 ante.

2 For the meaning of 'debtor-creditor-supplier agreement' see para 87 ante. For the meaning of 'restricted-use credit agreement' see para 86 ante.

3 For the meaning of 'consumer hire agreement' see para 82 ante.

4 For the meaning of 'linked transaction' see para 196 post. See also para 90 ante.

5 For the meaning of 'debtor' see para 81 note 3 ante.

6 For the meaning of 'hirer' see para 82 note 3 ante.

7 For the meaning of 'regulated agreement' see para 79 ante.

8 Consumer Credit Act 1974 s 72(1)(a).

9 For the meaning of 'relative' see para 116 note 12 ante.

10 Consumer Credit Act 1974 s 72(1)(b).

11 Ibid s 72(1).

12 'The possessor' means the person who has acquired possession of the goods as mentioned in ibid s 72(1): s 72(2)(a).

13 'The pre-cancellation period' means the period beginning when the possessor acquired possession and ending with the cancellation: ibid s 72(2)(c).

14 Ibid s 72(3). The onus of proof is on the bailee to show that any loss or damage occurred without any neglect or default or misconduct of himself or any of the servants to whom he delegated his duty: see *Morris v CW Martin & Sons Ltd* [1966] 1 QB 716, [1965] 2 All ER 725, CA.

15 As to lien generally see LIEN.

16 'The other party' means the person from whom the possessor acquired possession: Consumer Credit Act 1974 s 72(2)(b).

17 Ibid s 72(4).

18 Ibid s 72(5). Where the address of the possessor is specified in the executed agreement, references in s 72 to his own premises are to that address and no other: s 72(10). For the meaning of 'executed agreement' see para 115 note 3 ante.

Where, at any time during the period of 21 days following the cancellation, the possessor receives such a request as is mentioned in s 72(5), and unreasonably refuses or unreasonably fails to comply with it, his duty to take reasonable care of the goods continues until he delivers or sends the goods as mentioned in s 72(6) (see the text and note 22 infra); but if within that period he does not receive such a request his duty to take reasonable care of the goods ceases at the end of that period: s 72(8).

19 Ie other than a person referred to in ibid s 69(6)(b) (see para 185 note 5 head (2) ante): see s 72(6)(a).

20 Ie under ibid s 69 (see para 185 ante): s 72(6)(a).

21 Ibid s 72(6)(b).

22 Ibid s 72(6). Where the possessor delivers the goods as mentioned in s 72(6)(a), his obligation to take care of the goods ceases; and if he sends the goods as mentioned in s 72(6)(b), he is under a duty to take reasonable care to see that they are received by the other party and not damaged in transit, but in other respects his duty to take care of the goods ceases: s 72(7).

23 Ie ibid s 72: see s 72(11).

24 Ibid s 72(11). As to offences and enforcement under the Consumer Credit Act 1974 generally see para 298 et seq post.

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(8) CANCELLABLE AGREEMENTS/189. Goods given in part exchange.

189. Goods given in part exchange.

The provisions concerning goods given in part exchange¹ applies on the cancellation of a regulated agreement² where, in antecedent negotiations³, the negotiator⁴ agreed to take goods in part exchange, known as the 'part-exchange goods', and those goods have been delivered to him⁵.

Unless, before the end of the period of ten days beginning with the date of cancellation, the part-exchange goods are returned to the debtor⁶ or hirer⁷ in a condition substantially as good as when they were delivered to the negotiator, the debtor or hirer is entitled to recover from the negotiator a sum equal to the part-exchange allowance⁸.

During the period of ten days beginning with the date of cancellation, the debtor or hirer, if he is in possession of goods to which the cancelled agreement relates, has a lien⁹ on them for delivery of the part-exchange goods, in a condition substantially as good as when they were delivered to the negotiator, or a sum equal to the part-exchange allowance; and if the lien continues to the end of that period it thereafter subsists only as a lien for a sum equal to the part-exchange allowance¹⁰.

Where the debtor or hirer recovers from the negotiator or creditor, or both of them jointly, a sum equal to the part-exchange allowance, then, if the title of the debtor or hirer to the part-exchange goods has not vested in the negotiator, it so vests on the recovery of that sum¹¹.

1 Ie the Consumer Credit Act 1974 s 73: see s 73(1). For the meaning of 'goods' see para 82 note 5 ante.

2 For the meaning of 'regulated agreement' see para 79 ante.

3 For the meaning of 'antecedent negotiations' see para 177 ante.

4 For the meaning of 'negotiator' see para 177 ante. For the purposes of the Consumer Credit Act 1974 s 73, the negotiator must be treated as having agreed to take goods in part exchange if, in pursuance of the antecedent negotiations, he either purchased or agreed to purchase those goods or accepted or agreed to accept them as part of the consideration for the cancelled agreement: s 73(7)(a).

5 Ibid s 73(1).

6 For the meaning of 'debtor' see para 81 note 3 ante.

7 For the meaning of 'hirer' see para 82 note 3 ante.

8 Consumer Credit Act 1974 s 73(2). For the purposes of s 73, the part-exchange allowance is the sum agreed as such in the antecedent negotiations or, if no such agreement was arrived at, such sum as it would have been reasonable to allow in respect of the part-exchange goods if no notice of cancellation had been served: s 73(7)(b). As to the notice of cancellation see para 185 ante.

In the case of a debtor-creditor-supplier agreement within s 12(b) (see para 87 ante), the negotiator and the creditor are under a joint and several liability to pay to the debtor a sum recoverable under s 73(2): s 73(3). Subject to any agreement between them, the creditor is entitled to be indemnified by the negotiator for loss suffered by the creditor in satisfying his liability under s 73(3), including costs reasonably incurred by him in defending proceedings instituted by the debtor: s 73(4). For the meaning of 'debtor-creditor-supplier agreement' see para 87 ante. For the meaning of 'creditor' see para 81 note 2 ante.

In an action brought against the creditor for a sum recoverable under s 73(2), he is entitled, in accordance with rules of court, to have the negotiator made a party to the proceedings: s 73(8). For the meaning of 'rules of court' see para 186 note 12 ante.

- 9 As to lien generally see LIEN.
- 10 Consumer Credit Act 1974 s 73(5).
- 11 Ibid s 73(6).

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(9) MULTIPLE AGREEMENTS/190. Multiple agreements.

(9) MULTIPLE AGREEMENTS

190. Multiple agreements.

An agreement is a multiple agreement if its terms are such as to (1) place a part of it within one category of agreement mentioned in the Consumer Credit Act 1974, and another part of it within a different category of agreement so mentioned, or within a category of agreement not so mentioned¹; or (2) place it, or a part of it, within two or more categories of agreement so mentioned². Where an agreement falls within head (2) above, it must be treated as an agreement in each of the categories in question, and the Consumer Credit Act 1974 applies to it accordingly³. Where a part of an agreement falls within head (1) or head (2) above, that part must be treated for the purposes of the Consumer Credit Act 1974 as a separate agreement⁴.

In the case of an agreement for running-account credit⁵, a term of the agreement allowing the credit limit⁶ to be exceeded merely temporarily must not be treated as a separate agreement or as providing fixed-sum credit⁷ in respect of the excess⁸.

The Consumer Credit Act 1974 does not apply to a multiple agreement so far as the agreement relates to goods⁹ if under the agreement payments are to be made in respect of the goods in the form of rent¹⁰ issuing out of land¹¹.

1 Consumer Credit Act 1974 ss 18(1)(a), 189(1). See further s 188(1), Sch 2 Pt II example 18.

2 Ibid ss 18(1)(b), 189(1). As to multiple agreements see also *Mutual Finance Ltd v Davidson*[1963] 1 All ER 133, [1963] 1 WLR 134, CA; *National Home Loans Corpn plc v Hannah* [1997] CCLR 7.

3 Consumer Credit Act 1974 s 18(3). See further Sch 2 Pt II example 16.

4 Ibid s 18(2). See further Sch 2 Pt II example 16. Where under s 18(2) a part of a multiple agreement is to be treated as a separate agreement, the multiple agreement must be construed accordingly, with any necessary modifications; and any sum payable under the multiple agreement, if not apportioned by the parties, must for the purposes of proceedings in any court relating to the multiple agreement be apportioned by the court as may be requisite: s 18(4).

5 For the meaning of 'running-account credit' see para 84 ante.

6 For the meaning of 'credit limit' see para 84 note 6 ante.

7 For the meaning of 'fixed-sum credit' see para 85 ante.

8 Consumer Credit Act 1974 s 18(5). See further Sch 2 Pt II example 23.

9 For the meaning of 'goods' see para 82 note 5 ante.

10 ie other than a rent charge: see the Consumer Credit Act 1974 s 18(6).

11 Ibid s 18(6). For the meaning of 'land' see para 93 note 2 ante.

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4,

Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

190 Multiple agreements

NOTES 1, 4--See *Southern Pacific Mortgage Ltd v Heath* [2009] EWCA Civ 1135, [2010] Bus LR 616, [2009] All ER (D) 77 (Nov) (agreement was unitary and not to be treated as two separate agreements).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(10) MODIFYING AGREEMENTS/191. Variation and modification.

(10) MODIFYING AGREEMENTS

191. Variation and modification.

Regulated agreements¹ may be varied unilaterally by the creditor² or owner³, or may be varied or modified by consent⁴.

Where an agreement, known as the 'modifying agreement'⁵, varies or supplements an earlier agreement, the modifying agreement must for the purposes of the Consumer Credit Act 1974 be treated as revoking the earlier agreement and containing provisions reproducing the combined effect of the two agreements; and obligations outstanding in relation to the earlier agreement must accordingly be treated as outstanding instead in relation to the modifying agreement⁶. If the earlier agreement is a regulated agreement⁷ but, apart from this provision, the modifying agreement is not then, unless the modifying agreement is for running-account credit, it must be treated as a regulated agreement⁸.

If the earlier agreement is a cancellable agreement⁹ and the modifying agreement is made within the cooling-off period¹⁰ applicable to the earlier agreement, then the modifying agreement must be treated¹¹ as a cancellable agreement¹².

These provisions do not apply to a non-commercial agreement¹³.

- 1 For the meaning of 'regulated agreement' see para 79 ante.
- 2 For the meaning of 'creditor' see para 81 note 2 ante.
- 3 As to unilateral variation of a regulated agreement see paras 243-244 post. For the meaning of 'owner' see para 82 note 1 ante.
- 4 Ie by a modifying agreement: see the text and notes 5-13 infra; and paras 192-195 post.
- 5 See the Consumer Credit Act 1974 ss 82(2), 189(1). As to the form and content of modifying agreements which are, or are treated as, regulated agreements see the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 7, Sch 8; and paras 192-194 post.
- 6 Consumer Credit Act 1974 s 82(2). See further s 188(1), Sch 2 Pt II examples 22, 23, 24.
- 7 If the earlier agreement is a regulated agreement for running-account credit, and by the modifying agreement the creditor allows the credit limit to be exceeded but intends the excess to be merely temporary, the Consumer Credit Act 1974 Pt V (ss 55-74) (as amended), except s 56 (see para 177 ante), does not apply to the modifying agreement: s 82(4). See further Sch 2 Pt II examples 22, 23. For the meaning of 'running-account credit' see para 84 ante; and for the meaning of 'credit limit' see para 84 note 6 ante.
- 8 Ibid s 82(3). See further Sch 2 Pt II example 24.
- 9 For the meaning of 'cancellable agreement' see para 183 note 1 ante.
- 10 Ie the period applicable under the Consumer Credit Act 1974 s 68 (see para 184 note 2 ante): see s 82(5).
- 11 Ie whether or not the modifying agreement would, apart from ibid s 82(5), be a cancellable agreement: see s 82(5).
- 12 See ibid s 82(5). The modifying agreement must be treated as a cancellable agreement in respect of which a notice may be served under s 68 (see para 184 note 2 ante) not later than the end of the period applicable under that provision to the earlier agreement: see s 82(5).
- Except under s 82(5), a modifying agreement is not to be treated as a cancellable agreement: s 82(6).

13 Ibid s 82(7). For the meaning of 'non-commercial agreement' see para 107 ante.

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

191 Variation and modification

TEXT AND NOTES 5, 6--The Consumer Credit Act 1974 s 82(2) does not apply if the modifying agreement is an exempt agreement as a result of s 16(6C): s 82(2A) (added by SI 2005/2967; and amended by SI 2008/733).

TEXT AND NOTE 8--Now, unless the modifying agreement is for running-account credit or is an exempt agreement as a result of s 16(6C), it must be treated as a regulated agreement: 1974 s 82(3) (amended by SI 2005/2967).

TEXT AND NOTES 9-12--The 1974 Act s 82(5) does not apply where the modifying agreement is an exempt agreement as a result of s 16(6C): s 82(5A) (added by SI 2005/2967).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(10) MODIFYING AGREEMENTS/192. Form and content of modifying agreements.

192. Form and content of modifying agreements.

The provisions of the Consumer Credit (Agreements) Regulations 1983¹ apply to modifying agreements² which vary or supplement earlier credit agreements³ or earlier hire agreements⁴ and which are, or are treated as⁵, regulated agreements⁶.

Documents embodying modifying agreements varying or supplementing earlier credit agreements or earlier hire agreements must contain the information set out in the Consumer Credit (Agreements) Regulations 1983⁷. Where certain information about financial and related particulars⁸ cannot be easily ascertained by the creditor⁹ or owner¹⁰, estimated information based on such assumptions as the creditor or owner may reasonably make in all the circumstances of the case, and an indication of the assumptions made, must be included in documents embodying modifying agreements varying or supplementing earlier credit agreements or earlier hire agreements¹¹. Where any information about financial and related particulars¹² is contained in any document embodying an earlier agreement, nothing in these provisions requires¹³ the information to be contained in any document embodying a modifying agreement varying or supplementing an earlier agreement if the information is not varied or supplemented by the modifying agreement and the document contains a statement to this effect¹⁴.

Information about financial and related particulars¹⁵ must be shown together as a whole¹⁶ and not interspersed with other information apart from sub-totals of total amounts and cross-references to terms of the modifying agreement¹⁷.

Documents embodying modifying agreements must identify clearly the terms and financial and related particulars of earlier agreements varied or supplemented by modifying agreements¹⁸.

1 Ie the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553 (as amended): see reg 7(1). As to the application of the regulations to modifying agreements see also para 161 note 2 ante.

2 As to the meaning of 'modifying agreement' see para 191 post.

3 For the meaning of 'earlier credit agreement' see para 161 note 2 ante.

4 For the meaning of 'earlier hire agreement' see para 161 note 2 ante. Where a modifying agreement varies or supplements an earlier hire agreement and the modified agreement is, or is treated as, a restricted-use debtor-creditor-supplier agreement, the provisions of the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 7 apply to any document embodying the modifying agreement as though it varied or supplemented an earlier restricted-use debtor-creditor-supplier agreement, except that its heading must be: 'Agreement modifying a Hire Agreement and regulated by the Consumer Credit Act 1974': Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 7(15). For the meaning of 'restricted-use credit agreement' see para 86 ante. For the meaning of 'debtor-creditor-supplier agreement' see para 87 ante. As to the meaning of 'embodying' see para 115 note 2 ante.

5 Ie under the Consumer Credit Act 1974 s 82(3) (see para 191 ante): see the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 7(1).

6 Ibid reg 7(1). For the meaning of 'regulated agreement' see para 79 ante.

7 Ibid reg 7(2), (9). Documents embodying modifying agreements varying or supplementing earlier credit agreements must contain the information set out in reg 7(2), Sch 8 Pt I (see para 193 post): see reg 7(2). Documents embodying modifying agreements varying or supplementing earlier hire agreements must contain the information set out in reg 7(9), Sch 8 Pt II (see para 194 post): see reg 7(9). As to the prescribed terms which must be contained in a document see paras 167-168 ante.

- 8 le any information set out in ibid Sch 8 Pt I paras 8-10 or in Sch 8 Pt II paras 5, 6: see reg 7(3), (10).
- 9 For the meaning of 'creditor' see para 81 note 2 ante.
- 10 For the meaning of 'owner' see para 82 note 1 ante.
- 11 Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 7(3), (10).
- 12 le the information set out in ibid regs 2(1), 3(1), Sch 1 paras 3-19, Sch 3 paras 3-8 (see paras 163-164): see reg 7(12).
- 13 le except as mentioned in ibid Sch 8: see reg 7(12).
- 14 Ibid reg 7(12).
- 15 le the information set out in ibid Sch 8 Pt I paras 3-19 (see para 193 post) or in Sch 8 Pt II paras 3-8 (see para 194 post): see reg 7(4), (11).
- 16 le in documents embodying modifying agreements varying or supplementing earlier credit agreements in relation to the credit to be provided under the modified agreement or in documents embodying modifying agreements varying or supplementing earlier hire agreements in relation to the goods to be bailed or hired under the modified agreement: see ibid reg 7(4), (11). For the meaning of 'goods' see para 82 note 5 ante.
- 17 Ibid reg 7(4), (11). However, in the case of documents embodying modifying agreements varying or supplementing earlier restricted-use debtor-creditor-supplier agreements for fixed-sum credit which were to finance a transaction comprising the acquisition of goods, services, land or other things specified in the earlier agreement or identified and agreed on at the time the earlier agreement was made and relating to more than one description of goods, services, land or other things, the cash prices, and the total cash price, referred to in Sch 8 Pt I para 3 (see para 193 post) may be shown in a schedule to the document together with each description of the goods, services, land or other things, provided that the total cash price and a reference to the schedule to the document are shown together with the remaining financial and related particulars specified in Sch 8 Pt I paras 4-19 (see para 193 post): reg 7(5). For the meaning of 'fixed-sum credit' see para 85 ante. For the meaning of 'finance' see para 83 note 8 ante. For the meaning of 'land' see para 93 note 2 ante. For the meaning of 'cash price' see para 162 note 13 ante.
- 18 Ibid reg 7(13).

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

192 Form and content of modifying agreements

TEXT AND NOTES 8-11--SI 1983/1553 reg 7(3) substituted: SI 2004/1482.

TEXT AND NOTES 15-17--SI 1983/1553 reg 7(4), (11) substituted: SI 2004/1482 (amended by SI 2004/2619).

NOTE 17--SI 1983/1553 reg 17(5) amended: SI 2004/1482.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(10) MODIFYING AGREEMENTS/193. Agreements modifying earlier credit agreements.

193. Agreements modifying earlier credit agreements.

All types of modifying agreement¹ which vary or supplement earlier credit agreements² must contain a heading in one of the following forms of words, as the case may require, shown prominently on the first page of the document:

- 84 (1) 'Agreement modifying a Hire-Purchase Agreement and regulated by the Consumer Credit Act 1974'³;
- 85 (2) 'Agreement modifying a Conditional Sale Agreement and regulated by the Consumer Credit Act 1974'⁴; or
- 86 (3) 'Agreement modifying a Credit Agreement and regulated by the Consumer Credit Act 1974'⁵.

All types of modifying agreement must also contain the name and a postal address of the creditor⁶ and the name and a postal address of the debtor⁷.

Certain modifying agreements⁸ must contain a list or other description of the goods, services or other things and, in the case of land, a general description of the land (whether or not varied or supplemented under the modifying agreement) the acquisition of which is to be financed by credit under the modified agreement⁹, and the cash price (whether or not so varied or supplemented) in relation to each such list or other description¹⁰. These agreements must also contain the total cash price under the modified agreement¹¹.

Modifying agreements in relation to which any advance payment is to be made¹² must contain the amount of the additional advance payments to be made by the debtor in relation to the modifying agreement and, where the modifying agreement is a cancellable agreement, the nature of such payments¹³.

Modifying agreements under which any charge included in the total charge for credit in relation to an earlier agreement for fixed-sum credit is varied or supplemented or under which the amount of the credit to be provided under such an earlier agreement is varied or supplemented¹⁴ must contain the total amount of the credit to be provided under the modified agreement¹⁵.

Certain modifying agreements¹⁶ must contain the total amount of the credit to be provided under the modified agreement¹⁷.

Modifying agreements under which the provisions relating to any credit limit¹⁸ under an earlier agreement for running-account credit are varied¹⁹ must contain the varied credit limit under the modified agreement²⁰.

Certain modifying agreements²¹ must contain the total charge for credit²² in relation to the credit to be provided under the modified agreement²³. These modifying agreements must also contain the total amount payable under the modified agreement²⁴.

Certain modifying agreements²⁵ must contain the varied or supplemented rate of any interest on the credit to be provided under the modified agreement or a statement that the rate of interest under the earlier agreement is unchanged²⁶. These modifying agreements must also contain the total amount of other charges included in the total charge for credit in relation to the credit to be provided under the modified agreement²⁷.

Modifying agreements under which (a) the amount of the credit to be provided under an earlier agreement for fixed-sum credit is varied or supplemented²⁸; (b) the repayment provisions of an earlier agreement for fixed-sum or for running-account credit are varied or supplemented²⁹; or (c) any charge included in the total charge for credit in relation to an earlier agreement for fixed-sum or for running-account credit is varied or supplemented³⁰, must contain the timing of repayments to be made under the modified agreement³¹. These modifying agreements must contain the amount of each repayment to be made under the modified agreement³².

Modifying agreements under which (i) the amount of the credit to be provided under an earlier agreement for fixed-sum credit is varied or supplemented; (ii) the repayment provisions of such an agreement are varied or supplemented; or (iii) any charge included in the total charge for credit in relation to such an agreement is varied or supplemented, must contain the APR³³ in relation to the modified agreement or a statement indicating that the total amount payable under the modified agreement is not greater than the total cash price of the goods, services, land or other things, the acquisition of which is to be financed by credit under that agreement³⁴. Certain other modifying agreements³⁵ must contain the APR in relation to the modified agreement³⁶, and certain modifying agreements³⁷ must contain the APR in relation to the modified agreement calculated on specified assumptions³⁸.

Modifying agreements which are required³⁹ to disclose an APR in relation to the modified agreement and where the APR is based on a total charge for credit which is calculated to take account of relief available⁴⁰ must contain a statement indicating that it has been assumed in the calculation of the APR in relation to the modified agreement that relief may be available⁴¹ in respect of premiums under certain policies of insurance without any deduction⁴².

Modifying agreements which are required⁴³ to disclose an APR in relation to the modified agreement and under which the rate or amount of any item included in the total charge for credit in relation to the modified agreement will or may be varied⁴⁴ must contain a statement indicating that in calculating the APR in relation to the credit to be provided under the modified agreement no account has been taken of any variation which may occur under that agreement of the rate or amount of any item entering into that calculation⁴⁵. These agreements must also contain a statement indicating the circumstances in which any such variation⁴⁶ may occur⁴⁷.

Modifying agreements⁴⁸ under which an article taken in pawn by any person under an earlier agreement is varied or supplemented, and where no separate pawn-receipt is given, must contain a statement indicating that an article has been taken in pawn under the modified agreement and a description of the article, unless unchanged from that in the earlier agreement, sufficient to identify it⁴⁹.

Other modifying agreements⁵⁰ under which (A) any provisions for security provided by the debtor in relation to an earlier agreement to secure the carrying out of the obligations of the debtor under the earlier agreement are varied, including a variation to or from there being no security provided by the debtor; or (B) new or additional security is to be provided by the debtor, must contain a description of the new, additional or varied security to be provided by the debtor in relation to the modified agreement and of the subject matter to which it relates, sufficient to identify the new, additional or varied security, or a statement indicating that the debtor is no longer providing any security in relation to that agreement⁵¹.

Modifying agreements under which any provisions for charges on default under an earlier agreement are varied, including a variation to or from there being no such charges, must contain an indication of any charges payable under the modified agreement to the creditor upon failure by the debtor or a relative of his to do or refrain from doing anything which he is required to do or refrain from doing, as the case may be, or a statement indicating that no such charges are payable under that agreement⁵².

1 As to the meaning of 'modifying agreement' see para 191 ante.

2 For the meaning of 'earlier credit agreement' see para 161 note 2 ante.

3 Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 7(2), Sch 8 Pt I para 1(1)(a). See also note 5 infra. For the meaning of 'hire-purchase agreement' see para 95 ante. For the meaning of 'regulated' see para 79 ante.

4 Ibid Sch 8 Pt I para 1(1)(b). See also note 5 infra. For the meaning of 'conditional sale agreement' see para 93 ante.

5 Ibid Sch 8 Pt I para 1(1)(c). Where the document and a pawn-receipt are combined, the words ', and Pawn-Receipt,' must be inserted in the heading after the word 'Agreement' in the second place that it occurs: Sch 8 Pt I para 1(2). For the meaning of 'pawn-receipt' see para 210 post. Where the document embodies an agreement of which at least one part is a credit agreement not regulated by the Consumer Credit Act 1974, the word 'partly' must be inserted before 'regulated' unless the regulated and unregulated parts of the agreement are clearly separate: Sch 8 Pt I para 1(3). As to the meaning of 'embodies' see para 115 note 2 ante. For the meaning of 'unregulated' see para 79 ante.

6 For the meaning of 'creditor' see para 81 note 2 ante.

7 Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 8 Pt I para 2. For the meaning of 'debtor' see para 81 note 3 ante.

8 In modifying agreements under which (1) goods, services, land or other things, the acquisition of which was to be comprised in a transaction to be financed by an earlier restricted-use debtor-creditor-supplier agreement for fixed-sum credit and which were specified in the earlier agreement or identified and agreed on at the time the earlier agreement was made, are varied or supplemented; or (2) the cash price of goods, services, land or other things, the acquisition of which was to be comprised in a transaction to be financed by an earlier restricted-use debtor-creditor-supplier agreement for fixed-sum credit and which were specified in the earlier agreement or identified and agreed on at the time the earlier agreement was made, is varied but the goods, services, land or other things are not varied or supplemented: see *ibid* Sch 8 Pt I para 3. For the meaning of 'goods' see para 82 note 5 ante. For the meaning of 'land' see para 93 note 2 ante. For the meaning of 'financed' see para 83 note 8 ante. For the meaning of 'restricted-use credit agreement' see para 86 ante. For the meaning of 'debtor-creditor-supplier agreement' see para 87 ante. For the meaning of 'fixed-sum credit' see para 85 ante. For the meaning of 'cash price' see para 162 note 13 ante.

9 For the meaning of 'modified agreement' see para 168 note 30 ante.

10 Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 8 Pt I para 3(1). However, where both the description and the cash price of all the goods, services, land or other things the acquisition of which was to be comprised in a transaction to be financed by the earlier agreement are unchanged, these requirements may be satisfied in relation to such goods, services, land or other things by a statement clearly indicating that the descriptions and cash prices in the earlier agreement are unchanged: Sch 8 Pt I para 3(1) proviso.

11 Ibid Sch 8 Pt I para 3(2). For the purposes of Sch 8 Pt I, the total cash price under the modified agreement must be taken to be the total of: (1) the total amount of the capital outstanding under the earlier agreement on the relevant date within the meaning of Sch 8 Pt I para 5 (see note 15 infra); and (2) the cash price in relation to each list or other description of any additional goods, services, land or other things the acquisition of which is to be financed by credit under the modifying agreement: reg 7(8). For the purposes of Sch 8 Pt I, in calculating (a) the amount of repayments or of any capital outstanding under an earlier agreement; (b) the total charge for credit (or any items included in it) in relation to the credit to be provided under the modified agreement; or (c) the APR in relation to the modified agreement, the relevant date must be determined by reference to the date of the modifying agreement: reg 7(7). As to the total charge for credit see para 91 ante, 224 et seq post. For the meaning of 'the APR' see para 163 note 37 ante.

12 In modifying agreements in relation to which any advance payment is to be made by the debtor additional to any made in relation to an earlier agreement (whether under the modifying agreement or as a condition precedent to the making of that agreement) before he is provided with additional credit under that agreement or, as the case may be, before he enters into that agreement: see *ibid* Sch 8 Pt I para 4. For the meaning of 'advance payment' see para 163 note 15 ante.

13 Ibid Sch 8 Pt I para 4. For the meaning of 'cancellable agreement' see para 183 note 1 ante.

14 In except (1) modifying agreements falling within *ibid* Sch 8 Pt I para 3 (see the text and notes 10-11 supra) under which the total amount payable by the debtor under the modified agreement is not greater than the total cash price under the agreement and there is no advance payment under the agreement; and (2) modifying agreements where the earlier agreement is an agreement such as is described in the Consumer

Credit (Rebate on Early Settlement) Regulations 1983, SI 1983/1562, reg 2(2) (see para 254 head (1) post): see the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 8 Pt I para 5.

15 Ibid Sch 8 Pt I para 5. The total amount of the credit to be provided is to be calculated as follows, namely the total amount of the capital outstanding under the earlier agreement on the relevant date, increased or reduced, as the case may require, by (1) the amount of any additional credit to be provided under the modifying agreement; or (2) the amount of any reduction of credit to be effected under the modifying agreement: Sch 8 Pt I para 5(1). The total amount of the capital outstanding is the difference between (a) the total amount of the repayments outstanding under the earlier agreement at the relevant date (whether or not due at that date); and (b) the total amount of the charges on the credit not yet accrued under the earlier agreement: Sch 8 Pt I para 5(2). The total amount of the charges on the credit not yet accrued is the amount of a notional rebate calculated in accordance with the Consumer Credit (Rebate on Early Settlement) Regulations 1983, SI 1983/1562 (see para 255 post) as if early settlement had taken place and as if the settlement date were the relevant date disregarding any deferment of the settlement date under reg 5 (see para 255 post): Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 8 Pt I para 5(3). As to the relevant date see note 11 supra.

16 In modifying agreements both under which the amount of the credit to be provided under an earlier agreement for fixed-sum credit is varied or supplemented and where the earlier agreement is an agreement such as is described in the Consumer Credit (Rebate on Early Settlement) Regulations 1983, SI 1983/1562, reg 2(2) (see para 254 head (1) post): see the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 8 Pt I para 6.

17 Ibid Sch 8 Pt I para 6. The total amount of the credit to be provided is to be calculated as follows, namely the total of (1) the balance of the credit outstanding under the earlier agreement at the relevant date; (2) any charges thereon (included in the total charge for credit in relation to the credit to be provided under the earlier agreement) due and unpaid at the relevant date; and (3) the amount of any additional credit to be provided under the modifying agreement: Sch 8 Pt I para 6. As to the relevant date see note 11 supra.

18 For the meaning of 'credit limit' see para 84 note 6 ante.

19 In including a change to or from there being no credit limit: see the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 8 Pt I para 7. For the meaning of 'running-account credit' see para 84 ante.

20 Ibid Sch 8 Pt I para 7. The varied credit limit under the modified agreement must be expressed as (1) a sum of money; (2) a statement that the credit limit will be determined by the creditor from time to time under that agreement and that notice of it will be given by him to the debtor; (3) a sum of money together with a statement that the creditor may vary the credit limit to such sum as he may from time to time determine under that agreement and that notice of it will be given by him to the debtor; or (4) in a case not falling within head (1), (2) or (3) supra, either a statement indicating the manner in which the credit limit will be determined and that notice of it will be given by the creditor to the debtor or a statement indicating that there is no credit limit: Sch 8 Pt I para 7.

21 In modifying agreements under which any charge included in the total charge for credit in relation to an earlier agreement for fixed-sum credit is varied or supplemented, except modifying agreements (1) which do not specify either the intervals between repayments under the modified agreement or the amounts of repayments or both the intervals and the amounts (ibid Sch 8 Pt I para 8(a)); (2) under which the total amount payable by the debtor under the modified agreement to discharge his indebtedness in respect of the amount of credit provided may vary according to any formula specified in such agreement having effect by reference to movements in the level of any index or to any other factor (Sch 8 Pt I para 8(b)); (3) which provide for a variation of, or permit the creditor to vary, (whether or not by reference to any index) the amount or rate of any item included in the total charge for credit in relation to the modified agreement after the relevant date (Sch 8 Pt I para 8(c)); or (4) under which the total amount payable by the debtor under the modified agreement is not greater than the total cash price under that agreement (Sch 8 Pt I para 8(d)). As to the relevant date see note 11 supra.

22 In with or without a list of its constituent parts: see ibid Sch 8 Pt I para 8.

23 Ibid Sch 8 Pt I para 8.

24 In the total of any amounts to be shown under ibid Sch 8 Pt I paras 4, 5 or 6, and 8 (see the text and notes 13, 15, 17, 23 supra): Sch 8 Pt I para 10.

25 In modifying agreements under which (1) any charge included in the total charge for credit in relation to an earlier agreement for fixed-sum credit is varied or supplemented and which fall within the exceptions in ibid Sch 8 Pt I para 8(a)-(c) (see note 21 heads (1)-(3) supra); or (2) the rate of interest or any other charge included in the total charge for credit in relation to an earlier agreement for running-account credit is varied or supplemented: see Sch 8 Pt I para 9.

26 Ibid Sch 8 Pt I para 9(1).

27 Ibid Sch 8 Pt I para 9(2). However, where any such charge cannot be stated as an amount, the rate of the charge or the formula in accordance with which it may be calculated and the total amount of the other such charges must be shown separately: see Sch 8 Pt I para 9(2).

28 See *ibid* Sch 8 Pt I para 11(i).

29 See *ibid* Sch 8 Pt I para 11(ii).

30 See *ibid* Sch 8 Pt I para 11(iii).

31 Ibid Sch 8 Pt I para 11. The timing of repayments must be expressed by reference to one or more of the following: (1) the dates on which each repayment is to be made; (2) the frequency and number of the repayments and the date of the first repayment or a statement indicating the manner in which the date will be determined; (3) a statement indicating the manner in which the dates of the repayments will be determined: see Sch 8 Pt I para 11.

32 Ibid Sch 8 Pt I paras 12, 13. Modifying agreements falling within Sch 8 Pt I para 11 (except for those falling within Sch 8 Pt I para 13) must contain the amount of each repayment expressed as (1) a sum of money; (2) a specified proportion of a specified amount, including the amount outstanding from time to time; (3) a combination of heads (1) and (2) supra; or (4) in a case where the amount of any repayment cannot be expressed in accordance with head (1), (2) or (3) supra, a statement indicating the manner in which the amount will be determined: Sch 8 Pt I para 12.

Modifying agreements falling within Sch 8 Pt I para 11 where (a) the credit to be provided under the modified agreement is repayable by two or more instalments; and (b) the interest on such credit is of a type to which the Finance Act 1982 s 26 and Sch 7 (repealed: see now the Income and Corporation Taxes Act 1988 ss 369-379 (as amended); and INCOME TAXATION) apply must contain the amount of each repayment to be made under the modified agreement, with or without the equivalent repayment after deduction of tax in accordance with the Finance Act 1982 s 26 and Sch 7 (repealed: see *supra*): Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 8 Pt I para 13. The amount of each repayment is to be expressed as (i) a sum of money; (ii) a specified proportion of a specified amount, including the amount outstanding from time to time; (iii) a combination of heads (i) and (ii) supra; or (iv) in a case where the amount of any repayment cannot be expressed in accordance with head (i), (ii) or (iii) supra, a statement indicating the manner in which the amount will be determined: Sch 8 Pt I para 13. However, where the amounts to be paid by the debtor after deduction of tax in accordance with the Finance Act 1982 s 26 and Sch 7 (repealed: see *supra*) are the same, these requirements may be satisfied by a statement indicating the lowest and highest amounts of the repayments to be made under the modified agreement before deduction of tax: Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 8 Pt I para 13 proviso.

33 In documents embodying agreements varying or supplementing earlier credit agreements, the APR referred to in *ibid* Sch 8 Pt I paras 14-17 must (1) be denoted as 'APR' or 'annual percentage rate' or 'annual percentage rate of the total charge for credit'; and (2) be afforded no less prominence than any of the other financial and related particulars referred to in Sch 8 Pt I paras 3-19 and the statements specified in reg 2(3), Sch 2 Pt I Forms 5-10 (see para 162 ante): reg 7(6).

34 Ibid Sch 8 Pt I para 14.

35 In modifying agreements not falling within *ibid* Sch 8 Pt I para 16 (see the text and notes 37-38 *infra*) under which (1) the provisions relating to any credit limit under an earlier agreement for running-account credit are varied, including a change to or from there being no credit limit; (2) the repayment provisions of such an agreement are varied or supplemented; or (3) any charge included in the total charge for credit in relation to such an agreement is varied or supplemented: see Sch 8 Pt I para 15.

36 Ibid Sch 8 Pt I para 15. As to the APR see note 33 *supra*.

37 In modifying agreements under which (1) the provisions relating to the credit limit under an earlier debtor-creditor-supplier agreement for running-account credit which fulfils all the criteria in *ibid* Sch 8 Pt I para 16(b) are varied; (2) the repayment provisions of such an agreement are varied or supplemented; or (3) any charge included in the total charge for credit in relation to such an agreement is varied or supplemented: see Sch 8 Pt I para 16(a). The criteria mentioned in head (1) *supra* are that (a) the debtor agrees to pay the creditor an amount specified in the agreement on specified occasions; (b) there is a credit limit; and (c) charges for credit are either a fixed amount in respect of each transaction or calculated as a proportion of the price payable under a transaction financed by the credit: Sch 8 Pt I para 16(b).

38 See *ibid* Sch 8 Pt I para 16(1). The first assumption is the assumption that (1) the debtor is provided with an amount of credit at the date of the making of the modifying agreement which, taken with the amount of the

charge for that credit ascertained at that date under the provisions of the modified agreement, is equal to the credit limit under the modified agreement; and (2) the debtor repays the sum of the amounts referred to in head (1) supra by payments of the amounts specified in the modified agreement on the occasions specified in that agreement and makes no other payment and obtains no further credit in relation to the account: Sch 8 Pt I para 16(2). The second assumption is the like assumption as in Sch 8 Pt I para 16(2) save that the sum of the amounts referred to in head (1) supra must be taken to be one-third of the credit limit under the modified agreement: Sch 8 Pt I para 16(3).

39 le required under ibid Sch 8 Pt I para 14, 15 or 16: see Sch 8 Pt I para 17.

40 le available under the Income and Corporation Taxes Act 1970 s 19 and the Finance Act 1976 Sch 4 (both repealed: see now the Income and Corporation Taxes Act 1988 ss 266, 274 (both as amended); and INCOME TAXATION): see the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 8 Pt I para 17.

41 See note 40 supra.

42 le under the Income and Corporation Taxes Act 1970 s 21 (repealed: see now the Income and Corporation Taxes Act 1988 ss 266, 274 (both as amended); and INCOME TAXATION): Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 8 Pt I para 17.

43 le required under ibid Sch 8 Pt I para 14, 15 or 16: see Sch 8 Pt I para 18.

44 le other than a variation in consequence of an event which is certain to occur: see ibid Sch 8 Pt I para 18.

45 Ibid Sch 8 Pt I para 18.

46 le any variation referred to in ibid Sch 8 Pt I para 18: see Sch 8 Pt I para 19.

47 Ibid Sch 8 Pt I para 19. Where that information is ascertainable at the time at which the document referred to in the Consumer Credit Act 1974 s 61(1) (see para 160 ante) is presented or sent to the debtor for signature, these agreements must also contain the time at which any such variation may occur: see the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 8 Pt I para 19.

48 le modifying agreements to which the Consumer Credit Act 1974 s 114 (as amended) (see para 210 post) applies: see the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 8 Pt I para 20.

49 Ibid Sch 8 Pt I para 20.

50 le modifying agreements except those referred to in ibid Sch 8 Pt I para 20 (see the text and notes 48-49 supra): see Sch 8 Pt I para 21.

51 Ibid Sch 8 Pt I para 21.

52 Ibid Sch 8 Pt I para 22.

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

193 Agreements modifying earlier credit agreements

TEXT AND NOTES--Modifying agreements which are required under SI 1983/1553 Sch 8 Pt I paras 14-16 to disclose an APR in relation to the modified agreement and under which the provisions of an earlier agreement are varied or supplemented with the result that the modified agreement is an agreement to which SI 1980/51 reg 15A (see PARA 233)

applies must include the initial standard rate within the meaning of reg 15A(2) in relation to the modified agreement, together with a statement explaining (1) what that rate is; and (2) that it has been taken into account in calculating the APR in relation to the modified agreement: SI 1983/1553 Sch 8 Pt I para 19A (added by SI 1999/3177). See SI 1983/1553 Sch 8 Pt I paras 7A, 7B (inclusion of duration of modifying agreement), Sch 8 Pt I para 13A (inclusion of order or proportion in which amounts paid are to be applied or appropriated), Sch 8 Pt I para 23 (inclusion of cancellation rights) and Sch 8 Pt I para 24 (inclusion of amount payable on early settlement) (all added by SI 2004/1482).

TEXT AND NOTES 1-5--SI 1983/1553 Sch 8 Pt 1 para 1 substituted: SI 2004/1482.

TEXT AND NOTES 6, 7--SI 1983/1553 Sch 8 Pt I para 2 amended: SI 2004/3236.

TEXT AND NOTES 14, 15--SI 1983/1553 Sch 8 Pt 1 para 5 amended: SI 2004/1482.

TEXT AND NOTES 16, 17--SI 1983/1553 Sch 8 Pt I para 6 substituted: SI 2004/1482.

TEXT AND NOTES 21-23--SI 1983/1553 Sch 8 Pt I para 8 substituted: SI 2004/1482.

TEXT AND NOTES 25-27--SI 1983/1553 Sch 8 Pt I para 9 substituted: SI 2004/1482.

NOTE 33--SI 1983/1553 reg 7(6) amended: SI 2004/1482.

TEXT AND NOTE 52--SI 1983/1553 Sch 8 Pt I para 22 substituted: SI 2004/1482.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(10) MODIFYING AGREEMENTS/194. Agreements modifying earlier hire agreements.

194. Agreements modifying earlier hire agreements.

All types of modifying agreements¹ which vary or supplement earlier hire agreements² must contain a heading in the following form of words shown prominently on the first page of the document: 'Agreement modifying a Hire Agreement and regulated by the Consumer Credit Act 1974'³. Such modifying agreements must also contain the name and a postal address of the owner⁴ and the name and a postal address of the hirer⁵.

Certain modifying agreements⁶ must contain a list or other description of the goods to be bailed or hired under the modified agreement⁷, whether or not varied or supplemented under the modifying agreement⁸. However, where the description of all goods to be bailed or hired under the earlier agreement is unchanged, these requirements may be satisfied in relation to such goods by a statement clearly indicating that the descriptions in the earlier agreement are unchanged⁹.

Modifying agreements in relation to which any additional advance payment is to be made¹⁰ must contain the amount of the additional advance payments to be made by the hirer in relation to the modifying agreement and, where the modifying agreement is a cancellable agreement¹¹, the nature of such payments¹².

Modifying agreements under which any provisions of an earlier agreement relating to hire payments, other than advance payments, are varied or supplemented must contain (1) the amount of each hire payment, other than an advance payment, to be made by the hirer under the modified agreement in relation to any period on or after the date of the modifying agreement¹³; (2) the timing of such payments¹⁴.

Modifying agreements under which any provisions of an earlier agreement relating to payments other than advance payments and hire payments are varied or supplemented¹⁵ must contain the amount, or a statement indicating the manner in which the amount will be determined, of each of the following descriptions of payments¹⁶:

- 87 (a) any payment under arrangements for the installation, care, maintenance or protection of any goods¹⁷;
- 88 (b) any premium under a contract of insurance¹⁸; or
- 89 (c) any payment payable on termination of the modified agreement¹⁹.

Such modifying agreements must also contain the timing of such payments to be made under the modified agreement²⁰.

Certain modifying agreements²¹ must contain a statement indicating the circumstances in which any hire payment²² or any other payment²³ may be varied under the modified agreement²⁴.

Modifying agreements under which (i) additional goods are to be bailed or hired for a fixed period or a minimum period²⁵; or (ii) any provisions of an earlier agreement that goods are to be bailed or hired for a fixed period or a minimum period are varied²⁶, must contain a statement indicating that goods are to be bailed or hired under the modified agreement for a fixed period or a minimum period, as the case may be, and the duration of that period²⁷.

Modifying agreements under which (A) any provisions for security provided by the hirer in relation to an earlier agreement to secure the carrying out of the obligations of the hirer under

the earlier agreement are varied²⁸; or (B) new or additional security is to be provided by the hirer²⁹, must contain a description of the new, additional or varied security to be provided by the hirer in relation to the modified agreement and of the subject matter to which it relates, sufficient to identify the new, additional or varied security, or a statement indicating that the hirer is no longer providing any security in relation to that agreement³⁰.

Certain modifying agreements³¹ must contain an indication of any charges payable under the modified agreement to the owner upon failure by the hirer or a relative of his to do or refrain from doing anything which he is required to do or refrain from doing, as the case may be, or a statement indicating that no such charges are payable under that agreement³².

- 1 As to the meaning of 'modifying agreement' see para 191 ante.
- 2 For the meaning of 'earlier hire agreement' see para 161 note 2 ante.
- 3 Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 7(9), Sch 8 Pt II para 1 (amended by SI 1984/1600). For the meaning of 'regulated' see para 79 ante.
- 4 For the meaning of 'owner' see para 82 note 1 ante.
- 5 Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 8 Pt II para 2. For the meaning of 'hirer' see para 82 note 3 ante.
- 6 In modifying agreements under which (1) goods to be bailed or hired under an earlier agreement are varied or supplemented; or (2) any provision of an earlier agreement relating to advance, hire or other payments is varied but the goods to be bailed or hired under the earlier agreement are not varied or supplemented: *ibid* Sch 8 Pt II para 3. For the meaning of 'goods' see para 82 note 5 ante. For the meaning of 'advance payment' see para 163 note 15 ante. For the meaning of 'hire payment' see para 168 note 24 ante. As to bailment generally see BAILMENT.
- 7 For the meaning of 'modified agreement' see para 168 note 30 ante.
- 8 Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 8 Pt II para 3.
- 9 *Ibid* Sch 8 Pt II para 3 proviso.
- 10 In modifying agreements in relation to which any advance payment is to be made by the hirer additional to any made in relation to an earlier agreement (whether under the modifying agreement or as a condition precedent to the making of that agreement) before he is to take possession of any additional goods to be bailed or hired under that agreement or, as the case may be, before he enters into that agreement: see *ibid* Sch 8 Pt II para 4.
- 11 For the meaning of 'cancellable agreement' see para 183 note 1 ante.
- 12 Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 8 Pt II para 4.
- 13 *Ibid* Sch 8 Pt II para 5(1).
- 14 *Ibid* Sch 8 Pt II para 5(2). The timing of such payments must be expressed by reference to one or more of the following: (1) the dates on which each payment is to be made; (2) the frequency and number of payments and the date of the first payment or a statement indicating the manner in which that date will be determined; (3) a statement indicating the manner in which the dates of the payments will be determined: see Sch 8 Pt II para 5(2)(a), (b), (c).
- 15 This includes a change to or from there being no such other payments: see *ibid* Sch 8 Pt II para 6.
- 16 In payments, not being an advance payment or a hire payment, to be made under the modified agreement by, or on behalf of, the hirer or a relative of his to the owner in relation to any period on or after the date of the modifying agreement: see *ibid* Sch 8 Pt II para 6(1). For the meaning of 'relative' see para 116 note 12 ante. References in Sch 8 Pt II para 6 to the owner include references to his near relative, his partner and a member of a group of which he is a member, to any person nominated by him or by any such person in relation to the arrangements, the contract of insurance or the termination of the modified agreement, and to a near relative of his partner: see Sch 8 Pt II para 6(3). 'Near relative' means, in relation to any person, the husband, wife, father, mother, brother, sister, son or daughter of that person: see Sch 8 Pt II para 6(3). 'Group' means the

person (including a company) having control of a company together with all the companies directly or indirectly controlled by him: see Sch 8 Pt II para 6(3).

17 Ibid Sch 8 Pt II para 6(1)(a).

18 Ibid Sch 8 Pt II para 6(1)(b). For the meaning of 'contract of insurance' see para 162 note 15 ante.

19 le other than a payment on default to be shown under ibid Sch 8 Pt II para 10 (see the text and notes 31-32 *infra*): Sch 8 Pt II para 6(1)(c).

20 Ibid Sch 8 Pt II para 6(2). The timing of such payments must be expressed by reference to one or more of the following: (1) the dates on which each payment is to be made; (2) the frequency and number of the payments and the date of the first payment or a statement indicating the manner in which that date will be determined; or (3) a statement indicating the manner in which the dates of the payments will be determined: see Sch 8 Pt II para 6(2)(a), (b), (c).

21 le modifying agreements including provisions for variation of hire or other payments, where the amount of any such payment following any variation cannot be ascertained at the time of the making of the modifying agreement: see ibid Sch 8 Pt II para 7.

22 le any hire payment to be shown under ibid Sch 8 Pt II para 5: see Sch 8 Pt II para 7(1).

23 le any other payment to be shown under ibid Sch 8 Pt II para 6: see Sch 8 Pt II para 7(1).

24 Ibid Sch 8 Pt II para 7(1). Such modifying agreements must also contain, where that information is ascertainable at the time at which the document referred to in the Consumer Credit Act 1974 s 61(1) (see para 160 ante) is presented or sent to the hirer for signature, the time at which any such variation may occur: Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, Sch 8 Pt II para 7(1). However, Sch 8 Pt II para 7(1) does not apply to a variation under the modified agreement which takes account only of a change in VAT: see Sch 8 Pt II para 7(2). For these purposes references to a change in VAT include references to a change to or from no tax being charged: see Sch 8 Pt II para 7(3).

25 See ibid Sch 8 Pt II para 8(a).

26 le including a variation to or from there being no such fixed or minimum period: see ibid Sch 8 Pt II para 8(b).

27 Ibid Sch 8 Pt II para 8.

28 le including a variation to or from there being no security provided by the hirer: see ibid Sch 8 Pt II para 9(a).

29 See ibid Sch 8 Pt II para 9(b).

30 Ibid Sch 8 Pt II para 9.

31 le modifying agreements under which any provisions for charges on default under an earlier agreement are varied, including a variation to or from there being no such charges: see ibid Sch 8 Pt II para 10.

32 Ibid Sch 8 Pt II para 10.

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

194 Agreements modifying earlier hire agreements

TEXT AND NOTES--See SI 1983/1553 Sch 8 Pt II para 11 (inclusion of cancellation rights) (added by SI 2004/1482).

TEXT AND NOTES 1-3--SI 1983/1553 Sch 8 Pt II para 1 substituted: SI 2004/1482.

TEXT AND NOTES 4, 5--SI 1983/1553 Sch 8 Pt II para 2 amended: SI 2004/3236.

TEXT AND NOTES 31, 32--SI 1983/1553 Sch 8 Pt II para 10 amended: SI 2004/1482.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(10) MODIFYING AGREEMENTS/195. Improper execution.

195. Improper execution.

An improperly executed regulated agreement¹ is enforceable against the debtor² or hirer³ on an order of the court⁴ only⁵. As in the case of any regulated agreement, a regulated modifying agreement is not properly executed if the provisions relating to the supply of copies⁶ are not observed⁷.

1 For the meaning of 'regulated agreement' see para 79 ante. For the meaning of 'executed agreement' see para 115 note 3 ante. As to the execution of a modifying agreement see paras 160, 192 et seq ante. As to the meaning of 'modifying agreement' see para 191 ante.

2 For the meaning of 'debtor' see para 81 note 3 ante.

3 For the meaning of 'hirer' see para 82 note 3 ante.

4 For the meaning of 'court' see para 134 note 9 ante.

5 See the Consumer Credit Act 1974 s 65(1); and para 169 ante. As to enforcement see s 127; and para 290 post.

6 See ibid ss 62, 63; and paras 171-172 ante. As to the meaning of 'copy' see para 174 text and note 4 ante.

7 See ibid ss 62(3), 63(5); and paras 171-172 ante.

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(11) LINKED TRANSACTIONS/196. Linked transactions.

(11) LINKED TRANSACTIONS

196. Linked transactions.

A transaction entered into by the debtor or hirer¹, or a relative² of his, with any other person ('the other party'), except one for the provision of security³, is a linked transaction in relation to an actual or prospective regulated agreement⁴ (the 'principal agreement') of which it does not form part if (1) the transaction is entered into in compliance with a term of the principal agreement⁵; or (2) the principal agreement is a debtor-creditor-supplier agreement⁶ and the transaction is financed, or to be financed, by the principal agreement⁷; or (3) the other party is a specified person⁸, and a person so specified initiated the transaction by suggesting it to the debtor or hirer, or his relative, who enters into it (a) to induce the creditor or owner to enter into the principal agreement⁹; or (b) for another purpose related to the principal agreement¹⁰; or (c) where the principal agreement is a restricted-use credit agreement¹¹, for a purpose related to a transaction financed, or to be financed, by the principal agreement¹².

A linked transaction entered into before the making of the principal agreement has no effect until such time (if any) as that agreement is made¹³.

1 For the meaning of 'debtor' see para 81 note 3 ante; and for the meaning of 'hirer' see para 82 note 3 ante.

2 For the meaning of 'relative' see para 116 note 12 ante.

3 For the meaning of 'security' see para 200 note 1 ante.

4 For the meaning of 'regulated agreement' see para 79 ante.

5 Consumer Credit Act 1974 s 19(1)(a).

6 For the meaning of 'debtor-creditor-supplier agreement' see para 87 ante.

7 Consumer Credit Act 1974 s 19(1)(b). For the meaning of 'finance' see para 83 note 8 ante.

8 Ie (1) the creditor or owner, or his associate; (2) a person who, in the negotiation of the transaction, is represented by a credit-broker who is also a negotiator in antecedent negotiations for the principal agreement; (3) a person who, at the time the transaction is initiated, knows that the principal agreement has been made or contemplates that it might be made: *ibid* s 19(2). For the meaning of 'creditor' see para 81 note 2 ante; and for the meaning of 'owner' see para 82 note 1 ante. As to the meaning of 'associate' see para 92 ante. For the meaning of 'credit-broker' see para 94 ante. For the meaning of 'negotiator' and 'antecedent negotiations' see para 177 ante.

9 *Ibid* s 19(1)(c)(i).

10 *Ibid* s 19(1)(c)(ii).

11 For the meaning of 'restricted-use credit agreement' see para 86 ante.

12 Consumer Credit Act 1974 s 19(1)(c)(iii). See also s 188(1), Sch 2 Pt II example 11. A transaction may be a linked transaction in relation to a regulated agreement or prospective regulated agreement even though the transaction was entered into before 1 April 1977 (the day appointed for the commencement of the provisions as to regulated agreements): see s 192(1), Sch 3 para 2.

A transaction done under or for the purposes of a timeshare agreement is not, in relation to any regulated agreement, a linked transaction: see the Timeshare Act 1992 s 12(5).

13 Consumer Credit Act 1974 s 19(3). Section 19(3) only applies to transactions entered into on or after 19 May 1985: s 192(1), Sch 3 para 3 (amended by the Consumer Credit Act 1974 (Commencement No 8) Order 1983, SI 1983/1551).

Regulations may exclude linked transactions of the prescribed description from the operation of the Consumer Credit Act 1974 s 19(3): s 19(4). As to the excluded transactions see the Consumer Credit (Linked Transactions) (Exemptions) Regulations 1983, SI 1983/1560; and para 198 post.

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

196 Linked transactions

NOTE 12--1992 Act s 12(5) repealed: Timeshare Regulations 1997, SI 1997/1081 reg 14(10).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(11) LINKED TRANSACTIONS/197. Relevance of linked transactions.

197. Relevance of linked transactions.

The concept of a linked transaction¹ is relevant for various purposes of the Consumer Credit Act 1974 and regulations made under it. Any charges payable under a linked transaction are, subject to certain exceptions, part of the total charge for credit². Withdrawal of a party from a prospective regulated agreement³ operates as a withdrawal from a linked transaction⁴, and cancellation of a cancellable agreement⁵ by the debtor or hirer⁶ operates to cancel any linked transaction and to withdraw any offer by the debtor or hirer or his relative⁷ to enter into a linked transaction⁸. On cancellation of any linked transaction, any sum paid by the debtor or hirer or his relative is repayable, and any sum which but for the cancellation would have become payable by the debtor or hirer or his relative ceases to be payable, subject to certain exemptions⁹. If the linked transaction relates to goods¹⁰, the debtor, hirer or relative has a duty, subject to certain exceptions, to surrender the goods to the other party to the linked transaction and meanwhile to retain possession of them and take reasonable care of them¹¹.

Where for any reason the indebtedness of the debtor under a regulated consumer credit agreement¹² is discharged before the time fixed by the agreement, he, and any relative of his, is at the same time discharged from any liability under a linked transaction, other than a debt which has already become payable¹³.

The provisions preventing evasion of the Consumer Credit Act 1974 through use of security¹⁴ apply to security provided in relation to an actual or prospective linked transaction as they do to security provided in relation to the actual or prospective regulated agreement¹⁵. The provisions dealing with attempted contracting out of the statutory provisions for the protection of the debtor or hirer or his relative apply to a linked transaction as well as to a regulated agreement¹⁶, and the power to make regulations as to the form of secondary documents applies to documents issued in connection with linked transactions¹⁷.

There are also other provisions of the Consumer Credit Act 1974 which, although not confined to linked transactions, will almost invariably affect them¹⁸.

1 As to linked transactions see paras 90, 196 ante, 198 post.

2 See the Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, reg 4(b); and para 225 post. As to the total charge for credit see paras 91 ante, 224 et seq post.

3 For the meaning of 'regulated agreement' see para 79 ante.

4 See the Consumer Credit Act 1974 ss 57(1), 69; and paras 181, 185 ante.

5 For the meaning of 'cancellable agreement' see para 183 note 1 ante.

6 For the meaning of 'debtor' see para 81 note 3 ante; and for the meaning of 'hirer' see para 82 note 3 ante.

7 For the meaning of 'relative' see para 116 note 12 ante.

8 See the Consumer Credit Act 1974 s 69(1); and para 185 ante.

9 See ibid s 70 (as amended); and para 186 ante.

10 For the meaning of 'goods' see para 82 note 5 ante.

11 See the Consumer Credit Act 1974 s 72; and para 188 ante.

12 For the meaning of 'regulated' see para 79 ante; and for the meaning of 'consumer credit agreement' see para 81 ante.

13 See the Consumer Credit Act 1974 s 96(1); and para 252 post. This does not apply to a linked transaction which is itself an agreement providing the debtor or his relative with credit (see s 96(2); and para 252 post) or to linked transactions excluded by the Consumer Credit (Linked Transactions) (Exemptions) Regulations 1983, SI 1983/1560 (see the Consumer Credit Act 1974 s 96(3); and paras 198, 252 post).

14 For the meaning of 'security' see para 200 note 1 ante.

15 See the Consumer Credit Act 1974 s 113; and para 221 post.

16 See *ibid* s 173; and para 199 post.

17 See *ibid* s 179(1); and para 116 ante. At the date at which this volume states the law no such regulations had been made.

18 See *ibid* s 75 (creditor's liability for misrepresentation and breach of contract by supplier: see para 250 post); s 139 (reopening of extortionate agreements: see para 270 post).

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(11) LINKED TRANSACTIONS/198. Exemptions.

198. Exemptions.

Certain linked transactions¹ are excluded from (1) the operation of the provision² that a linked transaction entered into before the making of the regulated consumer credit agreement³ or regulated consumer hire agreement⁴ to which it relates has no effect until such time (if any) as that agreement is made⁵; (2) the provision⁶ that a notice of cancellation⁷ served by the debtor or hirer⁸ under a cancellable agreement⁹ operates to cancel any linked transaction and to withdraw any offer by the debtor or hirer, or his relative¹⁰, to enter into a linked transaction¹¹; and (3) the operation of the provision¹² that where the indebtedness of the debtor under a regulated consumer credit agreement is discharged before the time fixed by the agreement, he, and any relative of his, is discharged from any liability under a linked transaction, other than a debt which has already become payable¹³.

The linked transactions so excluded are (a) contracts of insurance¹⁴; (b) other contracts in so far as they contain a guarantee of goods¹⁵; or (c) transactions comprising or effected under (i) any agreement for the operation of any account (including any savings account) for the deposit of money¹⁶; or (ii) any agreement for the operation of a current account, under which the customer may, by means of cheques or similar orders payable to himself or to any other person, obtain or have the use of money held or made available by the person with whom the account is kept and which records alterations in the financial relationship between the said person and the customer¹⁷.

1 As to linked transactions see paras 90, 196 et seq ante.

2 Ie the Consumer Credit Act 1974 s 19(3): see para 196 text and note 13 ante.

3 For the meaning of 'regulated' see para 79 ante; and for the meaning of 'consumer credit agreement' see para 81 ante.

4 For the meaning of 'consumer hire agreement' see para 82 ante.

5 Consumer Credit (Linked Transactions) (Exemptions) Regulations 1983, SI 1983/1560, reg 2(1)(a).

6 Ie the Consumer Credit Act 1974 s 69(1)(i), (ii): see para 185 heads (a)-(b) ante.

7 For the meaning of 'notice of cancellation' see para 185 ante.

8 For the meaning of 'debtor' see para 81 note 3 ante; and for the meaning of 'hirer' see para 82 note 3 ante.

9 For the meaning of 'cancellable agreement' see para 183 note 1 ante.

10 For the meaning of 'relative' see para 116 note 12 ante.

11 Consumer Credit (Linked Transactions) (Exemptions) Regulations 1983, SI 1983/1560, reg 2(1)(b).

12 Ie the Consumer Credit Act 1974 s 96(1): see para 252 post.

13 Consumer Credit (Linked Transactions) (Exemptions) Regulations 1983, SI 1983/1560, reg 2(1)(c).

14 Ibid reg 2(2)(a). 'Contract of insurance' has the same meaning as in the Insurance Companies Act 1982 (see INSURANCE vol 25 (2003 Reissue) para 21): Consumer Credit (Linked Transactions) (Exemptions) Regulations 1983, SI 1983/1560, reg 1(2).

15 Ibid reg 2(2)(b). 'Guarantee of goods' means anything in writing which contains or purports to contain some promise or assurance (however worded or presented) that defects in goods will be made good by

complete or partial replacement, or by repair, monetary compensation or otherwise: reg 1(2). For the meaning of 'goods' see para 82 note 5 ante.

16 Ibid reg 2(2)(c)(i). 'Deposit' has the same meaning as in the Banking Act 1979 (repealed: see now the Banking Act 1987 s 5; and BAILMENT vol 3(1) (2005 Reissue) para 6): Consumer Credit (Linked Transactions) (Exemptions) Regulations 1983, SI 1983/1560, reg 1(2).

17 Ibid reg 2(2)(c)(ii).

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

198 Exemptions

NOTES 14, 16--Definitions of 'contract of insurance' and 'deposit' in SI 1983/1560 reg 1(2) revoked: Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649. References in SI 1983/1560 to contracts of insurance and to deposits must be read with (1) the Financial Services and Markets Act 2000 s 22; (2) any relevant order under s 22; and (3) Sch 2: SI 1983/1560 reg 1(2A) (added by SI 2001/3649). See further FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 84.

NOTE 14--See *Goshawk Dedicated (No 2) Ltd v Governor and Company of the Bank of Scotland* [2005] EWHC 2906 (Ch), [2006] 2 All ER 610.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/6. THE MAKING OF REGULATED AGREEMENTS/(12) CONTRACTING OUT FORBIDDEN/199. Certain contractual terms void.

(12) CONTRACTING OUT FORBIDDEN

199. Certain contractual terms void.

A term contained in a regulated agreement¹ or linked transaction², or in any other agreement relating to an actual or prospective regulated agreement or linked transaction, is void if, and to the extent that, it is inconsistent with a provision for the protection of the debtor³ or hirer⁴ or his relative⁵ or any surety⁶ contained in the Consumer Credit Act 1974 or in any regulation made under the Act⁷.

- 1 For the meaning of 'regulated agreement' see para 79 ante.
- 2 As to linked transactions see paras 90, 196-198 ante.
- 3 For the meaning of 'debtor' see para 81 note 3 ante.
- 4 For the meaning of 'hirer' see para 82 note 3 ante.
- 5 For the meaning of 'relative' see para 116 note 12 ante.
- 6 For the meaning of 'surety' see para 200 note 6 ante.

7 Consumer Credit Act 1974 s 173(1). See also *Mercantile Credit Co Ltd v Cross*[1965] 2 QB 205, [1965] 1 All ER 577, CA.

Where a provision specifies the duty or liability of the debtor or hirer or his relative or any surety in certain circumstances, a term is inconsistent with that provision if it purports to impose, directly or indirectly, an additional duty or liability on him in those circumstances: Consumer Credit Act 1974 s 173(2). Notwithstanding s 173(1), a provision of the Consumer Credit Act 1974 under which a thing may be done in relation to any person on an order of the court or the Director General of Fair Trading only is not to be taken to prevent its being done at any time with that person's consent given at that time, but the refusal of such consent does not give rise to any liability: s 173(3). As to the Director General of Fair Trading see para 110 ante.

UPDATE

157-199 The Making of Regulated Agreements

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

199 Certain contractual terms void

NOTE 7--Consumer Credit Act 1974 s 173(3) amended: Enterprise Act 2002 Sch 25 para 6(36).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/7. SECURITY/(1) SECURITY INSTRUMENTS/200. Security instruments.

7. SECURITY

(1) SECURITY INSTRUMENTS

200. Security instruments.

Any security within the meaning of the Consumer Credit Act 1974¹ provided in relation to a regulated agreement² must be expressed in writing³. Such written documents of security are known as 'security instruments'⁴. Regulations⁵ may prescribe the form and content of such security instruments⁶.

A security instrument is not properly executed unless (1) a document in the prescribed form, itself containing all the prescribed terms and conforming to regulations as to form and content, is signed in the prescribed manner⁷ by or on behalf of the surety⁸; and (2) the document embodies all the terms of the security, other than implied terms⁹; and (3) the document, when presented or sent for the purpose of being signed by or on behalf of the surety, is in such a state that its terms are readily legible¹⁰; and (4) when the document is presented or sent for the purpose of being signed by or on behalf of the surety there is also presented or sent a copy of the document¹¹.

A security instrument is not properly executed unless (a) where the security is provided after, or at the time when, the regulated agreement is made, a copy of the executed agreement¹², together with a copy of any other document referred to in it, is given to the surety at the time the security is provided¹³; or (b) where the security is provided before the regulated agreement is made, a copy of the executed agreement, together with a copy of any other document referred to in it, is given to the surety within seven days after the regulated agreement is made¹⁴.

If a security is not expressed in writing where this is required¹⁵, or a security instrument is improperly executed¹⁶, the security (so far as provided in relation to a regulated agreement) is enforceable against the surety on an order of the court only¹⁷. If an application for such an order is dismissed (except on technical grounds¹⁸ only) the provisions relating to ineffective securities¹⁹ apply to the security²⁰.

Where a security provided in relation to a regulated agreement has been varied, every copy of the security instrument relating to it given to a debtor, hirer or surety under any provision of the Consumer Credit Act 1974 must include either (i) an easily legible copy of any document varying the security²¹; or (ii) an easily legible statement of the terms of the security as varied²².

A term contained in a security instrument is void if, and to the extent that, it is inconsistent with a provision for the protection of any surety contained in the Consumer Credit Act 1974 or in any regulation made under the Act²³.

1 'Security', in relation to an actual or prospective consumer credit agreement or consumer hire agreement, or any linked transaction, means a mortgage, charge, pledge, bond, debenture, indemnity, guarantee, bill, note or other right provided by the debtor or hirer, or at his request (express or implied), to secure the carrying out of the obligations of the debtor or hirer under the agreement: Consumer Credit Act 1974 s 189(1). See also *Goulston Discount Co Ltd v Clark*[1967] 2 QB 493, [1967] 1 All ER 61, CA.

Note that for the purposes of the Consumer Credit Act 1974 'security' is limited to a security provided by the debtor or hirer, or provided at his express or implied request.

2 For the meaning of 'regulated agreement' see para 79 ante.

3 Consumer Credit Act 1974 s 105(1). This does not apply to a security provided by the debtor or hirer: s 105(6). For the meaning of 'debtor' see para 81 note 3 ante; and for the meaning of 'hirer' see para 82 note 3 ante.

4 See *ibid* s 105(2).

5 For the meaning of 'regulations' see para 114 note 2 ante.

6 Consumer Credit Act 1974 s 105(2). Regulations under s 105(2) may in particular (1) require specified information to be included in the prescribed manner in documents, and other specified material to be excluded (s 105(3)(a)); and (2) contain requirements to ensure that specified information is clearly brought to the attention of the surety, and that one part of a document is not given insufficient or excessive prominence compared with another (s 105(3)(b)). 'Surety' means the person by whom any security is provided, or the person to whom his rights and duties in relation to the security have passed by assignment or operation of law: s 189(1).

As to the regulations made, which extend only to guarantees and indemnities, see the Consumer Credit (Guarantees and Indemnities) Regulations 1983, SI 1983/1556, reg 3, Schedule; and para 201 post.

7 The signature of the document must be made by or on behalf of the surety in the space in the document indicated for the purpose (the signature box): *ibid* reg 4(2). As to the signature box see para 201 text and note 6 post. Regulation 4(2) does not prohibit the inclusion in the document, near to any such signature, of the signature by any witness outside any signature box in which the surety may sign: reg 4(3).

8 Consumer Credit Act 1974 s 105(4)(a). The lettering of the terms of the security included in the document and of the information contained in that document for the purpose of conforming to the requirements as to form and content must, apart from any signature, be easily legible and of a colour which is readily distinguishable from the colour of the paper: Consumer Credit (Guarantees and Indemnities) Regulations 1983, SI 1983/1556, reg 4(1).

9 Consumer Credit Act 1974 s 105(4)(b). As to the meaning of 'embodies' see para 115 note 2 ante.

10 *Ibid* s 105(4)(c).

11 *Ibid* s 105(4)(d). As to the meaning of 'copy' see para 174 text and note 4 ante.

12 For the meaning of 'executed agreement' see para 115 note 3 ante.

13 Consumer Credit Act 1974 s 105(5)(a). As to the form and content of copies see para 174 ante.

14 *Ibid* s 105(5)(b).

15 *Ie* under *ibid* s 105(1) (see the text and note 3 *supra*): s 105(7)(a).

16 *Ibid* s 105(7)(b).

17 *Ibid* s 105(7). For the meaning of 'court' see para 134 note 9 ante.

18 An application dismissed by the court or the Director General of Fair Trading must, if the court or the director (as the case may be) so certifies, be taken to be dismissed on technical grounds only: *ibid* s 189(1), (5). As to the Director General of Fair Trading see para 110 ante.

19 *Ie* *ibid* s 106: see para 222 post.

20 *Ibid* s 105(8).

21 Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557, reg 7(2)(a).

22 *Ibid* reg 7(2)(b).

23 See the Consumer Credit Act 1974 s 173; and para 199 ante.

UPDATE

200-223 Security

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

200 Security instruments

NOTE 8--SI 1983/1556 reg 4(1) amended: SI 2004/3236. As to provision for the signature where the instrument is concluded by electronic communication see SI 1983/1556 reg 4(5) (added by SI 2004/3236).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/7. SECURITY/(1) SECURITY INSTRUMENTS/201. Form and content of guarantees and indemnities.

201. Form and content of guarantees and indemnities.

Guarantees and indemnities¹ must contain (1) a heading shown prominently on the first page of the instrument in one of the prescribed forms of words², as the case may require³; (2) the prescribed information⁴; (3) a statement of the rights of the surety in the prescribed form⁵; and (4) a signature box in one of the prescribed forms⁶.

The wording of any prescribed form must be reproduced in security instruments without any alteration or addition, subject to certain exceptions⁷.

The above provisions apply only to guarantees and indemnities provided on or after 19 May 1985 in relation to regulated agreements at the request (express or implied) of the debtor or hirer⁸.

1 In the Consumer Credit (Guarantees and Indemnities) Regulations 1983, SI 1983/1556, 'security instrument' means a document expressing a guarantee or indemnity in writing: reg 2. See also para 200 ante. 'Guarantee' does not include a mortgage, charge, or pledge: reg 1(2).

2 The prescribed forms of words are: (1) 'Guarantee subject to the Consumer Credit Act 1974'; (2) 'Indemnity subject to the Consumer Credit Act 1974'; or (3) 'Guarantee and Indemnity subject to the Consumer Credit Act 1974': Consumer Credit (Guarantees and Indemnities) Regulations 1983, SI 1983/1556, reg 3, Schedule Pt I.

3 Ibid reg 3(1)(a).

4 Ibid reg 3(1)(b). The prescribed information is (1) the name and a postal address of the creditor or owner; (2) the name and a postal address of the debtor or hirer; (3) the name and a postal address of the surety; and (4) a description of the subject matter to which the security to be provided by the surety relates: reg 3, Schedule Pt II. For the meaning of 'creditor' see para 81 note 2; for the meaning of 'owner' see para 82 note 1 ante; for the meaning of 'debtor' see para 81 note 3; and for the meaning of 'hirer' see para 82 note 3 ante. For the meaning of 'security' see para 200 note 1 ante; and for the meaning of 'surety' see para 200 note 6 ante.

5 Ibid reg 3(1)(c). For the prescribed form of statement of the rights of sureties see reg 3, Schedule Pt III.

6 Ibid reg 3(1)(d). The prescribed forms of signature box are set out in reg 3, Schedule Pt IV and are as follows:

- 40 (1) where the regulated agreement in relation to which the guarantee is provided is a consumer credit agreement, Form 1; or
- 41 (2) where the regulated agreement in relation to which the guarantee is provided is a consumer hire agreement, Form 2; or
- 42 (3) where the regulated agreement in relation to which the indemnity, or the guarantee and indemnity, is provided is a consumer credit agreement, Form 3; or
- 43 (4) where the regulated agreement in relation to which the indemnity, or the guarantee and indemnity, is provided is a consumer hire agreement, Form 4.

For the meaning of 'regulated agreement' see para 79 ante; for the meaning of 'consumer credit agreement' see para 81 ante, and for the meaning of 'consumer hire agreement' see para 82 ante.

Where words are shown in capital letters in any form prescribed in the Schedule Pts III and IV and are reproduced in security instruments, they must be afforded more prominence (whether by capital letters, underlining, large or bold print or otherwise) than any other lettering in that form except lettering inserted in accordance with reg 3(2)(c) (see note 7 infra) and no less prominence than that given to any other information in the security instrument apart from the heading to the instrument, trade names, the names of the creditor or owner, of the debtor or hirer or of the surety, or lettering in the instrument inserted in handwriting: reg 3(5). 'Lettering' includes figures or symbols: reg 1(2).

7 Ibid reg 3(2). The exceptions are (1) the words 'the creditor' or 'the owner' or the words and symbol 'the creditor/owner' may be replaced by the name of the creditor or owner, by the expression by which the creditor or owner is referred to in the guarantee or indemnity or by an appropriate pronoun, and any consequential changes to pronouns may be made (reg 3(2)(a)); (2) the words 'the debtor' or 'the hirer' or the words and symbol 'the debtor/hirer' may be replaced by the name of the debtor or hirer and any consequential changes to pronouns and verbs may be made (reg 3(2)(b)); and (3) every form must be completed in accordance with any footnote (reg 3(2)(c)). Any such footnote must not be treated as part of any prescribed form and may be reproduced in addition to any such form: reg 3(3). Where any such footnote requires any words to be omitted, those words must be omitted or deleted: reg 3(4).

8 Ibid reg 2.

UPDATE

200-223 Security

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

201 Form and content of guarantees and indemnities

TEXT AND NOTES 1-3--SI 1983/1556 reg 3(1)(a) amended: SI 2004/3236.

NOTE 4--SI 1983/1556 Schedule Pt II amended: SI 2004/3236.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/7. SECURITY/(2) DUTY TO GIVE INFORMATION/202. Duty to give information to surety under fixed-sum credit agreement.

(2) DUTY TO GIVE INFORMATION

202. Duty to give information to surety under fixed-sum credit agreement.

The creditor¹ under a regulated agreement² for fixed-sum credit³ in relation to which security⁴ is provided, within 12 working days⁵ after receiving a request in writing to that effect from the surety⁶ and payment of a fee of £1⁷, must give to the surety (if a different person from the debtor⁸):

- 90 (1) a copy of the executed agreement⁹ (if any) and of any other document referred to in it¹⁰;
- 91 (2) a copy of the security instrument¹¹ (if any)¹²; and
- 92 (3) a statement signed by or on behalf of the creditor showing, according to the information to which it is practicable for him to refer, (a) the total sum paid under the agreement by the debtor¹³; (b) the total sum which has become payable under the agreement by the debtor but remains unpaid, and the various amounts comprised in that total sum, with the date when each became due¹⁴; and (c) the total sum which is to become payable under the agreement by the debtor, and the various amounts comprised in that total sum, with the date, or mode of determining the date, when each becomes due¹⁵.

The above provisions do not apply to an agreement under which no sum is, or will or may become, payable by the debtor¹⁶, or a request made less than one month after a previous request relating to the same agreement was complied with¹⁷. If the creditor under an agreement fails to comply with the provisions (i) he is not entitled, while the default continues, to enforce the security, so far as provided in relation to the agreement¹⁸; and (ii) if the default continues for one month he commits an offence¹⁹.

The provisions do not apply to a non-commercial agreement²⁰.

1 For the meaning of 'creditor' see para 81 note 2 ante.

2 For the meaning of 'regulated agreement' see para 79 ante.

3 For the meaning of 'fixed-sum credit' see para 85 ante.

4 For the meaning of 'security' see para 200 note 1 ante.

5 Consumer Credit (Prescribed Periods for Giving Information) Regulations 1983, SI 1983/1569, reg 2, Schedule. For the meaning of 'working day' see para 120 note 5 ante.

6 For the meaning of 'surety' see para 200 note 6 ante.

7 Consumer Credit Act 1974 s 107(1) (amended by the Consumer Credit (Further Increase of Monetary Amounts) Order 1998, SI 1998/997, art 3, Schedule).

8 For the meaning of 'debtor' see para 81 note 3 ante.

9 For the meaning of 'executed agreement' see para 115 note 3 ante. As to the meaning of 'copy' see para 174 text and note 4 ante.

10 Consumer Credit Act 1974 s 107(1)(a).

11 For the meaning of 'security instrument' see para 200 ante.

12 Consumer Credit Act 1974 s 107(1)(b).

13 Ibid s 107(1)(c)(i). See also note 15 infra.

14 Ibid s 107(1)(c)(ii). See also note 15 infra.

15 Ibid s 107(1)(c)(iii). If the creditor possesses insufficient information to enable him to ascertain the relevant amount and dates, he is taken to comply with s 107(1)(c)(iii) if his statement gives the basis on which, under the regulated agreement, they would fall to be ascertained: s 107(2).

A statement made by a creditor under s 107(1)(c) is binding on him: see s 172(1), (3); and para 303 post.

16 Ibid s 107(3)(a).

17 Ibid s 107(3)(b).

18 Ibid s 107(4)(a).

19 Ibid s 107(4)(b). An offence under s 107(4) is punishable on summary conviction only by a fine not exceeding level 4 on the standard scale: s 167(1), Sch 1 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46).

'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37(2) (as substituted): Interpretation Act 1978 s 5, Sch 1 (amended by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58(a)). See SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 1991 s 18 (substituted by the Criminal Justice Act 1993 s 65); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 144.

20 Consumer Credit Act 1974 s 107(5). For the meaning of 'non-commercial agreement' see para 107 ante.

UPDATE

200-223 Security

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

202 Duty to give information to surety under fixed-sum credit agreement

TEXT AND NOTE 19--Consumer Credit Act 1974 s 107(4)(b) repealed: SI 2008/1277.

NOTE 19--1991 Act s 18, consolidated in the Powers of Criminal Courts (Sentencing) Act 2000 s 128, repealed: Criminal Justice Act 2003 Sch 37 Pt 7. See now s 162.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/7. SECURITY/(2) DUTY TO GIVE INFORMATION/203. Duty to give information to surety under running-account credit agreement.

203. Duty to give information to surety under running-account credit agreement.

The creditor¹ under a regulated agreement² for running-account credit³ in relation to which security⁴ is provided, within 12 working days⁵ after receiving a request in writing to that effect from the surety⁶ and payment of a fee of £1⁷, must give to the surety (if a different person from the debtor⁸):

- 93 (1) a copy of the executed agreement⁹ (if any) and of any other document referred to in it¹⁰;
- 94 (2) a copy of the security instrument¹¹ (if any)¹²; and
- 95 (3) a statement signed by or on behalf of the creditor showing, according to the information to which it is practicable for him to refer, (a) the state of the account¹³; (b) the amount, if any, currently payable under the agreement by the debtor to the creditor¹⁴; and (c) the amounts and due dates of any payments which, if the debtor does not draw further on the account, will later become payable under the agreement by the debtor to the creditor¹⁵.

The above provisions do not apply to an agreement under which no sum is, or will or may become, payable by the debtor¹⁶, or a request made less than one month after a previous request relating to the same agreement was complied with¹⁷. If the creditor under an agreement fails to comply with the provisions (i) he is not entitled, while the default continues, to enforce the security, so far as provided in relation to the agreement¹⁸; and (ii) if the default continues for one month he commits an offence¹⁹.

The provisions do not apply to a non-commercial agreement²⁰.

1 For the meaning of 'creditor' see para 81 note 2 ante.

2 For the meaning of 'regulated agreement' see para 79 ante.

3 For the meaning of 'running-account credit' see para 84 ante.

4 For the meaning of 'security' see para 200 note 1 ante.

5 Consumer Credit (Prescribed Periods for Giving Information) Regulations 1983, SI 1983/1569, reg 2, Schedule. For the meaning of 'working day' see para 120 note 5 ante.

6 For the meaning of 'surety' see para 200 note 6 ante.

7 Consumer Credit Act 1974 s 108(1) (amended by the Consumer Credit (Further Increase of Monetary Amounts) Order 1998, SI 1998/997, art 3, Schedule).

8 For the meaning of 'debtor' see para 81 note 3 ante.

9 For the meaning of 'executed agreement' see para 115 note 3 ante. As to the meaning of 'copy' see para 174 text and note 4 ante.

10 Consumer Credit Act 1974 s 108(1)(a).

11 For the meaning of 'security instrument' see para 200 ante.

12 Consumer Credit Act 1974 s 108(1)(b).

13 Ibid s 108(1)(c)(i).

14 Ibid s 108(1)(c)(ii).

15 Ibid s 108(1)(c)(iii). If the creditor possesses insufficient information to enable him to ascertain the relevant amount and dates, he is taken to comply with s 108(1)(c)(iii) if his statement gives the basis on which, under the regulated agreement, they would fall to be ascertained: s 108(2).

A statement made by a creditor under s 108(1)(c) is binding on him: see s 172(1), (3); and para 303 post.

16 Ibid s 108(3)(a).

17 Ibid s 108(3)(b).

18 Ibid s 108(4)(a).

19 Ibid s 108(4)(b). An offence under s 108(4) is punishable on summary conviction only by a fine not exceeding level 4 on the standard scale: s 167(1), Sch 1 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see para 202 note 19 ante.

20 Consumer Credit Act 1974 s 108(5). For the meaning of 'non-commercial agreement' see para 107 ante.

UPDATE

200-223 Security

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

203 Duty to give information to surety under running-account credit agreement

TEXT AND NOTE 19--Consumer Credit Act 1974 s 108(4)(b) repealed: SI 2008/1277.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/7. SECURITY/(2) DUTY TO GIVE INFORMATION/204. Duty to give information to surety under consumer hire agreement.

204. Duty to give information to surety under consumer hire agreement.

The owner¹ under a regulated consumer hire agreement² in relation to which security³ is provided, within 12 working days⁴ after receiving a request in writing to that effect from the surety⁵ and payment of a fee of £1⁶, must give to the surety (if a different person from the hirer⁷):

- 96 (1) a copy of the executed agreement⁸ and of any other document referred to in it⁹;
- 97 (2) a copy of the security instrument¹⁰ (if any)¹¹; and
- 98 (3) a statement signed by or on behalf of the owner showing, according to the information to which it is practicable for him to refer, the total sum which has become payable under the agreement by the hirer but remains unpaid and the various amounts comprised in that total sum, with the date when each became due¹².

The above provisions do not apply to an agreement under which no sum is, or will or may become, payable by the hirer¹³, or a request made less than one month after a previous request relating to the same agreement was complied with¹⁴. If the owner under an agreement fails to comply with the provisions (a) he is not entitled, while the default continues, to enforce the security, so far as provided in relation to the agreement¹⁵; and (b) if the default continues for one month he commits an offence¹⁶.

The provisions do not apply to a non-commercial agreement¹⁷.

1 For the meaning of 'owner' see para 82 note 1 ante.

2 For the meaning of 'regulated' see para 79 ante; and for the meaning of 'consumer hire agreement' see para 82 ante.

3 For the meaning of 'security' see para 200 note 1 ante.

4 Consumer Credit (Prescribed Periods for Giving Information) Regulations 1983, SI 1983/1569, reg 2, Schedule. For the meaning of 'working day' see para 120 note 5 ante.

5 For the meaning of 'surety' see para 200 note 6 ante.

6 Consumer Credit Act 1974 s 109(1) (amended by the Consumer Credit (Further Increase of Monetary Amounts) Order 1998, SI 1998/997, art 3, Schedule).

7 For the meaning of 'hirer' see para 82 note 3 ante.

8 For the meaning of 'executed agreement' see para 115 note 3 ante. As to the meaning of 'copy' see para 174 text and note 4 ante.

9 Consumer Credit Act 1974 s 109(1)(a).

10 For the meaning of 'security instrument' see para 200 ante.

11 Consumer Credit Act 1974 s 109(1)(b).

12 Ibid s 109(1)(c). A statement made by an owner under s 109(1)(c) is binding on him: see s 172(1), (3); and para 303 post.

13 Ibid s 109(2)(a).

14 Ibid s 109(2)(b).

15 Ibid s 109(3)(a).

16 Ibid s 109(3)(b). An offence under s 109(3) is punishable on summary conviction only by a fine not exceeding level 4 on the standard scale: s 167(1), Sch 1 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see para 202 note 19 ante.

17 Consumer Credit Act 1974 s 109(4). For the meaning of 'non-commercial agreement' see para 107 ante.

UPDATE

200-223 Security

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

204 Duty to give information to surety under consumer hire agreement

TEXT AND NOTE 16--Consumer Credit Act 1974 s 109(3)(b) repealed: SI 2008/1277.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/7. SECURITY/(2) DUTY TO GIVE INFORMATION/205. Duty to give information to debtor or hirer.

205. Duty to give information to debtor or hirer.

The creditor¹ or owner² under a regulated agreement³ within 12 working days⁴ after receiving a request in writing to that effect from the debtor or hirer⁵ and payment of a fee of £1⁶, must give to the debtor or hirer a copy of any security instrument⁷ executed in relation to the agreement after the making of the agreement⁸.

The above provisions do not apply to (1) a non-commercial agreement⁹; or (2) an agreement under which no sum is, or will or may become, payable by the debtor or hirer¹⁰; or (3) a request made less than one month after a previous request relating to the same agreement was complied with¹¹. If the creditor or owner under an agreement fails to comply with the provisions (a) he is not entitled, while the default continues, to enforce the security¹², so far as provided in relation to the agreement¹³; and (b) if the default continues for one month he commits an offence¹⁴.

1 For the meaning of 'creditor' see para 81 note 2 ante.

2 For the meaning of 'owner' see para 82 note 1 ante.

3 For the meaning of 'regulated agreement' see para 79 ante.

4 Consumer Credit (Prescribed Periods for Giving Information) Regulations 1983, SI 1983/1569, reg 2, Schedule. For the meaning of 'working day' see para 120 note 5 ante.

5 For the meaning of 'debtor' see para 81 note 3 ante; and for the meaning of 'hirer' see para 82 note 3 ante.

6 Consumer Credit Act 1974 s 110(1) (amended by the Consumer Credit (Further Increase of Monetary Amounts) Order 1998, SI 1998/997, art 3, Schedule).

7 For the meaning of 'security instrument' see para 200 ante. As to the meaning of 'copy' see para 174 text and note 4 ante.

8 Consumer Credit Act 1974 s 110(1) (as amended: see note 6 supra).

9 Ibid s 110(2)(a). For the meaning of 'non-commercial agreement' see para 107 ante.

10 Ibid s 110(2)(b).

11 Ibid s 110(2)(c).

12 For the meaning of 'security' see para 200 note 1 ante.

13 Consumer Credit Act 1974 s 110(3)(a).

14 Ibid s 110(3)(b). An offence under s 110(3) is punishable on summary conviction only by a fine not exceeding level 4 on the standard scale: s 167(1), Sch 1 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see para 202 note 19 ante.

UPDATE

200-223 Security

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4,

Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

205 Duty to give information to debtor or hirer

TEXT AND NOTE 14--Consumer Credit Act 1974 s 110(3)(b) repealed: SI 2008/1277.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/7. SECURITY/(2) DUTY TO GIVE INFORMATION/206. Duty to give surety copy of default and other notices.

206. Duty to give surety copy of default and other notices.

When certain notices¹ are served on a debtor or hirer², a copy³ of the notice must be served by the creditor or owner⁴ on any surety⁵ (if a different person from the debtor or hirer)⁶. If the creditor or owner fails to serve a copy of the notice on any surety, the security⁷ is enforceable against the surety (in respect of the breach or other matter to which the notice relates) on an order of the court only⁸.

1 Le notices under the Consumer Credit Act 1974 s 87(1) (see para 263 post), s 76(1) (see para 234 post), or s 98(1) (see para 262 post).

2 For the meaning of 'debtor' see para 81 note 3 ante; and for the meaning of 'hirer' see para 82 note 3 ante.

3 As to the meaning of 'copy' see para 174 text and note 4 ante.

4 For the meaning of 'creditor' see para 81 note 2 ante; and for the meaning of 'owner' see para 82 note 1 ante.

5 For the meaning of 'surety' see para 200 note 6 ante.

6 Consumer Credit Act 1974 s 111(1). As to service see para 314 post. Every copy of a default notice or a notice under s 76(1) (see para 234 post) or s 98(1) (see para 262 post) served on any surety under s 111(1) must contain a prominent heading in one of the following forms of words: 'Surety's copy of notice served on debtor' or 'Surety's copy of notice served on hirer', as the case may require: Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557, reg 10.

7 For the meaning of 'security' see para 200 note 1 ante.

8 Consumer Credit Act 1974 s 111(2). For the meaning of 'court' see para 134 note 9 ante.

UPDATE

200-223 Security

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/7. SECURITY/(3) REALISATION OF SECURITIES/207. Realisation of securities.

(3) REALISATION OF SECURITIES

207. Realisation of securities.

Subject to certain special provisions in the case of the sale of a pawn¹, regulations² may provide for any matters relating to the sale or other realisation, by the creditor or owner³, of property over which any right has been provided by way of security⁴ in relation to an actual or prospective regulated agreement⁵, other than a non-commercial agreement⁶.

1 Ie the Consumer Credit Act 1974 s 121: see para 216 post. As to pledges and pawns generally see paras 208-218 post; and BAILMENT; PLEDGES AND PAWNS vol 36(1) (2007 Reissue) para 1 et seq.

2 For the meaning of 'regulations' see para 114 note 2 ante. As to the making of regulations generally see para 114 post. Contravention of any regulations made under ibid s 112 is an offence: s 167(2). An offence under s 167(2) is punishable on summary conviction by a fine not exceeding the prescribed sum and on conviction on indictment by a maximum of two years' imprisonment or a fine or both: s 167(1), Sch 1 (amended by virtue of the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see para 120 note 15 ante. At the date at which this volume states the law no such regulations had been made.

3 For the meaning of 'creditor' see para 81 note 2 ante; and for the meaning of 'owner' see para 82 note 1 ante.

4 For the meaning of 'security' see para 200 note 1 ante.

5 For the meaning of 'regulated agreement' see para 79 ante.

6 Consumer Credit Act 1974 s 112. For the meaning of 'non-commercial agreement' see para 107 ante.

UPDATE

200-223 Security

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/7. SECURITY/(4) PAWNS AND PLEDGES/208. Introduction.

(4) PAWNS AND PLEDGES

208. Introduction.

The Consumer Credit Act 1974 provides a new code for pawnbroking, replacing the Pawnbrokers Act 1872 and the Pawnbrokers Act 1960¹. The relevant provisions of the Consumer Credit Act 1974² have been brought into force only in respect of articles taken in pawn³ under a regulated consumer credit agreement⁴. The provisions do not apply to a pledge of documents of title or of bearer bonds⁵, or a non-commercial agreement⁶.

1 See para 7 ante.

2 In the Consumer Credit Act 1974 ss 114-121: see paras 210-218 post.

3 'Pawn' means any article subject to a pledge; 'pledge' means the pawnee's rights over an article taken in pawn; 'pawnee' and 'pawnor' include any person to whom the rights and duties of the original pawnee or the original pawnor, as the case may be, have passed by assignment or operation of law: *ibid* s 189(1).

4 See *ibid* Sch 3, para 39 (amended by the Consumer Credit Act 1974 (Commencement No 8) Order 1983, SI 1983/1551). For the meaning of 'regulated' see para 79 ante; and for the meaning of 'consumer credit agreement' see para 81 ante.

5 Consumer Credit Act 1974 s 114(3)(a) (amended by the Banking Act 1979 s 38(2)).

6 Consumer Credit Act 1974 s 114(3)(b). For the meaning of 'non-commercial agreement' see para 107 ante.

UPDATE

200-223 Security

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/7. SECURITY/(4) PAWNS AND PLEDGES/209. Pawn records.

209. Pawn records.

A person who takes any article in pawn¹ under a regulated consumer credit agreement² must keep such books or other records as are sufficient to show and explain readily at any time all dealings with the article, including (1) the taking of the article in pawn³; (2) any redemption of the article⁴; and (3) where the article has become realisable by the creditor⁵, any sale⁶ of the article⁷. In addition, the entries in the books or other records in respect of the dealings mentioned in heads (1) to (3) above must contain specified information⁸.

The entries in relation to any article taken in pawn in the books or other records required to be kept by these provisions must be retained at least until the expiration of whichever is the longer of (a) five years from the date on which the article was taken in pawn⁹; or (b) where an article has become realisable by the creditor, three years from the date of sale or the redemption of the article, as the case may be¹⁰.

1 For the meaning of 'pawn' see para 208 note 3 ante.

2 For the meaning of 'regulated' see para 79 ante; and for the meaning of 'consumer credit agreement' see para 81 ante.

3 Consumer Credit (Conduct of Business) (Pawn Records) Regulations 1983, SI 1983/1565, reg 2(1)(a). These regulations are made under the Consumer Credit Act 1974 s 26 (see para 124 ante).

4 Consumer Credit (Conduct of Business) (Pawn Records) Regulations 1983, SI 1983/1565, reg 2(1)(b). As to redemption see paras 212-213 post.

5 For the meaning of 'creditor' see para 81 note 2 ante.

6 Ie under the Consumer Credit Act 1974 s 121(1): see para 216 post.

7 Consumer Credit (Conduct of Business) (Pawn Records) Regulations 1983, SI 1983/1565, reg 2(1)(c).

8 Ibid reg 2(2). The information is specified in reg 2(2), Schedule, and is as follows:

44 (1) in relation to the taking of the article in pawn:

1. (a) the date and the number or other reference of the agreement under which the article was so taken, and of the pawn-receipt (see paras 210-211 post) if separate, sufficient to identify it or them;

1

2. (b) the date on which the article was so taken;

2

3. (c) the name and a postal address of the debtor (for the meaning of which see para 81 note 3 ante);

3

4. (d) the description that appears in the pawn-receipt of the article so taken;

4

5. (e) the amount of the credit secured by the pledge (for the meaning of which see para 208 note 3 ante);

5

6. (f) the date of the end of the redemption period (see para 212 post);

6

7. (g) the rate of interest, and the amount or rate of any other charges for credit, as provided for in the agreement under which the article was so taken;

7

- 45 (2) in relation to any redemption of the article, the date of the redemption;
- 46 (3) where the article has become realisable by the creditor, in relation to any sale of the article under the Consumer Credit Act 1974 s 121(1):
8. (a) the date of the sale;
 9. (b) where the article was sold by auction, the name and a postal address of the auctioneer;
 10. (c) where the article was not sold by auction, the postal address of the premises at which the sale took place;
 11. (d) the gross amount realised;
 12. (e) the itemised expenses, if any, of the sale;
 13. (f) where head (3)(e) supra applies, the net proceeds of sale, being the difference between the gross amount shown in accordance with the requirement in head (3)(d) supra and the total of the expenses shown in accordance with the requirement in head (3)(e) supra;
 14. (g) the amount which would have been payable under the agreement under which the article was taken in pawn if the article had been redeemed on the date of the sale;
 15. (h) where the net proceeds of sale are not less than the sum which, if the article taken in pawn had been redeemed on the date of the sale, would have been payable for its redemption, the amount of any surplus payable to the debtor;
 16. (i) in a case where head (3)(h) supra does not apply, the amount by which the net proceeds of sale fall short of the sum which would have been payable for the redemption of the article taken in pawn on the date of the sale, being the amount for which the debtor remains liable under s 121(4);
 17. (j) the date on which any surplus shown in accordance with the requirement in head (3)(h) supra was paid to the debtor;
 18. (k) the date on which any amount for which the debtor remained liable under s 121(4) shown in accordance with the requirement in head (i) was received from the debtor.

Where the entries in relation to any article taken in pawn are not shown together as a whole but are shown in separate places, then in each place where entries are made there must be shown (i) the date and the number or other reference of the agreement under which the article was taken in pawn and, where separate from any document embodying the agreement, the number or other reference of the pawn-receipt (Consumer Credit (Conduct of Business) (Pawn Records) Regulations 1983, SI 1983/1565, reg 2(3)(a)); (ii) the date on which the article was so taken (reg 2(3)(b)); and (iii) the name of the debtor (reg 2(3)(c)).

9 Ibid reg 2(4)(a).

10 Ibid reg 2(4)(b).

UPDATE

200-223 Security

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

209 Pawn records

NOTE 8--SI 1983/1565 Schedule amended: SI 2004/3262.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/7. SECURITY/(4) PAWNS AND PLEDGES/210. Pawn-receipts.

210. Pawn-receipts.

At the time he receives the article, a person who takes any article in pawn¹ under a regulated agreement² must give to the person from whom he receives it a receipt in the prescribed form³ (a 'pawn-receipt')⁴. If the creditor⁵ fails to observe this requirement or the requirements to supply copies of unexecuted and executed agreements⁶ and to give notice of cancellation rights⁷ in relation to the agreement he commits an offence⁸.

A person who takes any article in pawn from an individual⁹ whom he knows to be, or who appears to be and is, a minor commits an offence¹⁰.

1 For the meaning of 'pawn' see para 208 note 3 ante.

2 For the meaning of 'regulated agreement' see para 79 ante.

3 As to the prescribed form of receipt see the Consumer Credit (Pawn-receipts) Regulations 1983, SI 1983/1566; and para 211 post.

4 Consumer Credit Act 1974 s 114(1). Sections 114, 115 do not apply to a pledge of documents of title or of bearer bonds or to a non-commercial agreement: see para 208 ante.

Where a pawn-receipt is given under s 114(1) by a person who takes any article in pawn under a regulated consumer credit agreement (see para 81 ante) or a modifying agreement (see para 191 ante) varying or supplementing an earlier credit agreement which is, or is treated under s 82(3) (see para 191 ante) as, a regulated agreement, and where the pawn-receipt is not separate from any document embodying such an agreement, it must contain prescribed information and a notice in the prescribed form: Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 4. The prescribed information is that set out in reg 4, Sch 1 paras 1, 2, 20 (a statement indicating that an article has been taken in pawn under the agreement and a description of the article sufficient to identify it) (see para 163 ante). As to the prescribed form of notice see reg 4, Sch 2 Pt II Column 1 Form 16.

5 For the meaning of 'creditor' see para 81 note 2 ante.

6 Ie the requirements contained in the Consumer Credit Act 1974 ss 62-63: see paras 171-172 ante.

7 Ie the requirement in ibid s 64: see para 183 ante.

8 Ibid s 115. See also note 4 supra. An offence under s 115 is punishable on summary conviction only by a fine not exceeding level 4 on the standard scale: s 167(1), Sch 1 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see para 202 note 19 ante.

9 For the meaning of 'individual' see para 80note 1 ante.

10 Consumer Credit Act 1974 s 114(2). An offence under s 114(2) is punishable on summary conviction by a fine not exceeding the prescribed sum and on conviction on indictment by a maximum of one year's imprisonment or a fine or both: s 167(1), Sch 1 (amended by virtue of the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see para 120 note 15 ante.

UPDATE

200-223 Security

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory

Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

210 Pawn-receipts

NOTE 4--SI 1983/1553 reg 4 amended: SI 2004/1482.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/7. SECURITY/(4) PAWNS AND PLEDGES/211. Form and content of pawn-receipts.

211. Form and content of pawn-receipts.

Where a pawn-receipt¹ is given², by a person who takes any article in pawn³ under a regulated consumer credit agreement⁴ or a modifying agreement⁵ varying or supplementing an earlier agreement for the provision of credit⁶ which is, or is treated as⁷, a regulated agreement⁸, and where the pawn-receipt is separate from any document embodying such an agreement:

- 99 (1) the lettering⁹ in the pawn-receipt must, apart from any signature, be easily legible and of a colour which is readily distinguishable from the colour of the paper¹⁰;
- 100 (2) where words are shown in capital letters in the specified form¹¹ and are reproduced in the pawn-receipt, they must be afforded more prominence (whether by capital letters, underlining, large or bold print or otherwise) than any other lettering in that form, except lettering inserted in accordance with head (3)(f) below and no less prominence than that given to any other information in the pawn-receipt apart from the heading to the pawn-receipt, trade names, the names of the creditor and debtor¹² or lettering in the pawn-receipt inserted in handwriting¹³; and
- 101 (3) the pawn-receipt must include:
 - 3
 - 4. (a) a prominent heading on the front of the pawn-receipt, consisting of the words 'Consumer Credit Act 1974 - Pawn-receipt'¹⁴;
 - 5. (b) the name and a postal address of the creditor¹⁵;
 - 6. (c) the name and a postal address of the debtor¹⁶;
 - 7. (d) the date and the number or other reference of the agreement under which the article was taken in pawn sufficient to identify it¹⁷;
 - 8. (e) a description of the article taken in pawn sufficient to identify it¹⁸;
 - 9. (f) a notice in a box on the front of the pawn-receipt in the specified form without any alteration or addition, except that (i) the notice must be completed in accordance with the footnotes¹⁹; (ii) the words 'the creditor' may be replaced by the name of the creditor, by the expression by which the creditor is referred to in the pawn-receipt or by an appropriate pronoun, and any consequential changes to pronouns and verbs or other consequential grammatical changes may be made²⁰; and (iii) the word 'DEBTOR' may be replaced by 'BORROWER' or 'CUSTOMER'²¹;
 - 10. (g) the signature by or on behalf of the person taking the article in pawn²²; and
 - 11. (h) the date on which the article was taken in pawn²³.

4

1 See para 210 ante.

2 Ie under the Consumer Credit Act 1974 s 114(1): see para 210 ante.

3 For the meaning of 'pawn' see para 208 note 3 ante.

4 For the meaning of 'regulated' see para 79 ante; and for the meaning of 'consumer credit agreement' see para 81 ante.

5 As to the meaning of 'modifying agreement' see para 191 post.

6 For the meaning of 'credit' see para 83 ante.

7 Ie under the Consumer Credit Act 1974 s 82(3): see para 191 ante.

- 8 For the meaning of 'regulated agreement' see para 79 ante.
- 9 'Lettering' includes figures and symbols: Consumer Credit (Pawn-receipts) Regulations 1983, SI 1983/1566, reg 1(2).
- 10 Ibid reg 2(a).
- 11 If specified in ibid reg 2, Schedule. Any footnote to the form is not to be treated as part of it and may be reproduced in addition to the form: reg 3(1). Where any such footnote requires the creditor to omit any words, those words must be omitted or deleted: reg 3(2).
- 12 For the meaning of 'creditor' see para 81 note 2 ante; and for the meaning of 'debtor' see para 81 note 3 ante.
- 13 Consumer Credit (Pawn-receipts) Regulations 1983, SI 1983/1566, reg 2(b).
- 14 Ibid reg 2(c)(i).
- 15 Ibid reg 2(c)(ii).
- 16 Ibid reg 2(c)(iii).
- 17 Ibid reg 2(c)(iv).
- 18 Ibid reg 2(c)(v).
- 19 Ibid reg 2(c)(vi)(aa).
- 20 Ibid reg 2(c)(vi)(bb).
- 21 Ibid reg 2(c)(vi)(cc).
- 22 Ibid reg 2(c)(vii).
- 23 Ibid reg 2(c)(viii).

UPDATE

200-223 Security

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

211 Form and content of pawn-receipts

TEXT AND NOTES 1-10--SI 1983/1566 reg 2(a) amended: SI 2004/3262.

TEXT AND NOTES 14-23--SI 1983/1566 reg 2(c) amended: SI 2004/3262.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/7. SECURITY/(4) PAWNS AND PLEDGES/212. Redemption period.

212. Redemption period.

A pawn¹ is redeemable² at any time within six months after it was taken³. Subject to this, the period within which a pawn is redeemable is the same as the period fixed by the parties for the duration of the credit⁴ secured by the pledge⁵, or such longer period as they may agree⁶.

This period is known as the 'redemption period'⁷. If the pawn is not redeemed by the end of the redemption period, it nevertheless remains redeemable until it is realised by the pawnee⁸, except where⁹ the property in it passes to the pawnee¹⁰. No special charge may be made for redemption of a pawn after the end of the redemption period, and charges in respect of the safe keeping of the pawn may not be at a higher rate after the end of the redemption period than before¹¹.

- 1 For the meaning of 'pawn' see para 208 note 3 ante.
- 2 As to redemption generally see para 213 post.
- 3 Consumer Credit Act 1974 s 116(1). Section 116 does not apply to a pledge of documents of title or of bearer bonds or to a non-commercial agreement: see para 208 ante.
- 4 For the meaning of 'credit' see para 83 ante.
- 5 For the meaning of 'pledge' see para 208 note 3 ante.
- 6 Consumer Credit Act 1974 s 116(2).
- 7 Ibid s 116(3).
- 8 Ie under ibid s 121: see para 216 post. For the meaning of 'pawnee' see para 208 note 3 ante.
- 9 Ie under ibid s 120(1)(a) (as amended): see para 215 post.
- 10 Ibid s 116(3).
- 11 Ibid s 116(4).

UPDATE

200-223 Security

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

212 Redemption period

NOTE 3--See *Wilson v Robertsons (London) Ltd* [2005] EWHC 1425 (Ch), [2005] 3 All ER 873 (not open to parties to backdate credit agreements in an attempt to contract out of the statutory six month minimum redemption period).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/7. SECURITY/(4) PAWNS AND PLEDGES/213. Redemption procedure.

213. Redemption procedure.

On surrender of the pawn-receipt¹, and payment of the amount owing, at any time when the pawn² is redeemable³, the pawnee⁴ must deliver the pawn to the bearer of the pawn-receipt⁵. This duty to deliver the pawn does not apply if the pawnee knows or has reasonable cause to suspect that the bearer of the pawn-receipt is neither the owner⁶ of the pawn nor authorised by the owner to redeem it⁷. The pawnee is not liable to any person in tort or delict for delivering the pawn pursuant to this duty, or refusing to deliver it where the person demanding delivery does not surrender the pawn-receipt or pay the amount owing; nor is the pawnee liable where he knows or has reasonable cause to suspect that the bearer of the pawn-receipt is neither the owner of the pawn nor authorised by the owner to redeem it⁸.

- 1 As to pawn-receipts see paras 210-211 ante.
- 2 For the meaning of 'pawn' see para 208 note 3 ante.
- 3 As to the redemption period see para 212 ante.
- 4 For the meaning of 'pawnee' see para 208 note 3 ante.
- 5 Consumer Credit Act 1974 s 117(1). Section 117 does not apply to a pledge of documents of title or of bearer bonds or to a non-commercial agreement: see para 208 ante.
- 6 For the meaning of 'owner' see para 82 note 1 ante.
- 7 Consumer Credit Act 1974 s 117(2). 'Reasonable cause' is not defined, but see the analogous position at common law; and BAILMENT; PLEDGES AND PAWNS vol 36(1) (2007 Reissue) para 1 et seq.
- 8 Ibid s 117(3).

UPDATE

200-223 Security

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/7. SECURITY/(4) PAWNS AND PLEDGES/214. Loss of pawn-receipt.

214. Loss of pawn-receipt.

A person (the 'claimant') who is not in possession of the pawn-receipt¹ but claims to be the owner² of the pawn³, or to be otherwise entitled or authorised to redeem it⁴, may redeem it at any time when it is redeemable by tendering to the pawnee⁵ in place of the pawn-receipt (1) a statutory declaration made by the claimant in the prescribed form, and with the prescribed contents⁶; or (2) where the pawn is security⁷ for fixed-sum credit⁸ not exceeding £75 or running-account credit⁹ on which the credit limit¹⁰ does not exceed £75, and the pawnee agrees, a statement in writing in the prescribed form, and with the prescribed contents, signed by the claimant¹¹.

On compliance by the claimant with this provision, the statutory provisions as to redemption¹² apply as if the declaration or statement were the pawn-receipt, and the pawn-receipt itself becomes inoperative for the purposes of those provisions¹³.

1 As to pawn-receipts see paras 210-211 ante.

2 For the meaning of 'owner' see para 82 note 1 ante.

3 For the meaning of 'pawn' see para 208 note 3 ante.

4 As to the redemption period see para 212 ante.

5 For the meaning of 'pawnee' see para 208 note 3 ante.

6 Consumer Credit Act 1974 s 118(1)(a). Any statutory declaration tendered to a creditor by virtue of s 118(1)(a) by a person who is not in possession of the pawn-receipt but who claims to be the owner of the pawn, or to be otherwise entitled or authorised to redeem it, must be in the prescribed form and must contain the information specified in that form: see the Consumer Credit (Loss of Pawn-receipt) Regulations 1983, SI 1983/1567, reg 2(1), Sch 1. For the meaning of 'creditor' see para 81 note 2 ante.

The Consumer Credit Act 1974 s 118 does not apply to a pledge of documents of title or of bearer bonds or to a non-commercial agreement: see para 208 ante.

7 For the meaning of 'security' see para 200 note 1 ante.

8 For the meaning of 'fixed-sum credit' see para 85 ante.

9 For the meaning of 'running-account credit' see para 84 ante.

10 For the meaning of 'credit limit' see para 84 note 6 ante.

11 Consumer Credit Act 1974 s 118(1)(b) (amended by the Consumer Credit (Further Increase of Monetary Amounts) Order 1998, SI 1998/997, art 3, Schedule). Any statement in writing to a creditor by virtue of the Consumer Credit Act 1974 s 118(1)(b) (as amended) by a person who is not in possession of the pawn-receipt but who claims to be the owner of the pawn, or to be otherwise entitled or authorised to redeem it, must be in the prescribed form and must contain the prescribed information: see the Consumer Credit (Loss of Pawn-receipt) Regulations 1983, SI 1983/1567, reg 2(2), Sch 2.

12 Ie the Consumer Credit Act 1974 s 117: see para 213 ante.

13 Ibid s 118(2).

UPDATE

200-223 Security

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/7. SECURITY/(4) PAWNS AND PLEDGES/215. Failure to redeem.

215. Failure to redeem.

If at the end of the redemption period¹ the pawn² has not been redeemed it becomes realisable³ by the pawnee⁴. This is subject to the provision that the property in the pawn passes to the pawnee where the redemption period is six months and the pawn is security⁵ for fixed-sum credit⁶ not exceeding £75 or running-account credit⁷ on which the credit limit⁸ does not exceed £75⁹.

1 As to the redemption period see para 212 ante. Where the debtor or hirer is entitled to apply to the court for a time order under the Consumer Credit Act 1974 s 129 (see para 292 post) the operative time for the provisions as to realisation or passing of property is after the expiry of five days following the end of the redemption period: see s 120(2). For the meaning of 'debtor' see para 81 note 3 ante; for the meaning of 'hirer' see para 82 note 3 ante; and for the meaning of 'court' see para 134 note 9 ante.

Section 120 does not apply to a pledge of documents of title or of bearer bonds or to a non-commercial agreement: see para 208 ante.

2 For the meaning of 'pawn' see para 208 note 3 ante.

3 As to realisation of pawns see para 216 post.

4 Consumer Credit Act 1974 s 120(1)(b). For the meaning of 'pawnee' see para 208 note 3 ante.

5 For the meaning of 'security' see para 200 note 1 ante.

6 For the meaning of 'fixed-sum credit' see para 85 ante.

7 For the meaning of 'running-account credit' see para 84 ante.

8 For the meaning of 'credit limit' see para 84 note 6 ante.

9 Consumer Credit Act 1974 s 120(1)(a) (amended by the Consumer Credit (Further Increase of Monetary Amounts) Order 1998, SI 1998/997, art 3, Schedule). This overrides the general provisions restricting the benefit which a creditor may obtain from a security contained in the Consumer Credit Act 1974 s 113 (see para 221 post): s 120(1)(a) (as so amended).

Under similar provisions contained in the Pawnbrokers Act 1872 s 17 (repealed) the pawnbroker did not obtain such property in the pawn as would prevail against the claim of the real owner where the pawn had been pledged without the owner's consent by a person who had no title to it: *Singer Manufacturing Co v Clark* (1879) 5 Ex D 37 at 45.

UPDATE

200-223 Security

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/7. SECURITY/(4) PAWNS AND PLEDGES/216. Realisation of pawns.

216. Realisation of pawns.

When a pawn¹ has become realisable² by the pawnee, he may sell it, after giving to the pawnor³ (except in such cases as may be prescribed⁴) not less than 14 days' notice⁵ of the intention to sell, indicating in the notice the asking price and such other particulars as may be prescribed⁶. Where any article taken in pawn which has become realisable is security⁷ for fixed-sum credit⁸ not exceeding £100 or running-account credit⁹ on which the credit limit¹⁰ does not exceed £100, such notice is not required¹¹.

Within the period of 20 working days¹² after the sale takes place, the pawnee must give the pawnor the prescribed information in writing as to the sale, its proceeds and expenses¹³.

1 For the meaning of 'pawn' see para 208 note 3 ante.

2 As to when a pawn becomes realisable see para 215 ante.

3 For the meaning of 'pawnee' and 'pawnor' see para 208 note 3 ante.

4 As to the exceptions to the requirement to give notice see the text and note 11 infra.

5 Consumer Credit (Realisation of Pawn) Regulations 1983, SI 1983/1568, reg 2(1). For the meaning of 'notice' see para 128 note 3 ante.

6 Consumer Credit Act 1974 s 121(1). The pawnee's interest attaches to the proceeds of the sale of goods: see *Mathew v TM Sutton Ltd* [1994] 4 All ER 793, [1994] 1 WLR 1455.

The prescribed particulars, contained in the Consumer Credit (Realisation of Pawn) Regulations 1983, SI 1983/1568, reg 4, Sch 1, are as follows:

- 47 (1) the name and a postal address of the creditor (for the meaning of which see para 81 note 2 ante);
- 48 (2) the name and a postal address of the debtor (for the meaning of which see para 81 note 3 ante);
- 49 (3) one of the following matters: (a) a description of the article taken in pawn; (b) the date and the number or other reference of the pawn-receipt (see paras 210-211 ante); or (c) the date and the number or other reference of the agreement under which the article was taken in pawn, sufficient to identify it;
- 50 (4) the date on which the article was taken in pawn;
- 51 (5) the date of the end of the redemption period (see para 212 ante);
- 52 (6) in a case where the article taken in pawn is intended to be sold by auction (a) the name and a postal address of the auctioneer; and (b) the date on or after which the article may be auctioned;
- 53 (7) in any case other than where the article taken in pawn is intended to be sold by auction (a) the postal address of the premises at which the article will be offered for a sale; and (b) the date on or after which the article will be offered for sale;
- 54 (8) a statement indicating that the sale will not take place if the article taken in pawn is redeemed by surrendering the pawn-receipt and paying the amount owing without delay.

For provisions designed to secure the realisation of a proper sum see para 217 post. The Consumer Credit Act 1974 s 121 does not apply to a pledge of documents of title or of bearer bonds or to a non-commercial agreement: see para 208 ante.

- 7 For the meaning of 'security' see para 200 note 1 ante.
- 8 For the meaning of 'fixed-sum credit' see para 85 ante.
- 9 For the meaning of 'running-account credit' see para 84 ante.
- 10 For the meaning of 'credit limit' see para 84 note 6 ante.
- 11 Consumer Credit (Realisation of Pawn) Regulations 1983, SI 1983/1568, reg 3 (amended by SI 1998/998).
- 12 Consumer Credit (Realisation of Pawn) Regulations 1983, SI 1983/1568, reg 2(1). For the meaning of 'working day' see para 120 note 5 ante.
- 13 Consumer Credit Act 1974 s 121(2). The prescribed information, contained in the Consumer Credit (Realisation of Pawn) Regulations 1983, SI 1983/1568, reg 5, Sch 2, is as follows:

- 55 (1) the name and a postal address of the creditor;
- 56 (2) the name and a postal address of the debtor;
- 57 (3) one of the following matters: (a) a description of the article taken in pawn and sold; (b) the date and the number or other reference of the pawn-receipt; or (c) the date and the number or other reference of the agreement under which the article was taken in pawn, sufficient to identify it;
- 58 (4) the date of the sale;
- 59 (5) the gross amount realised;
- 60 (6) the itemised expenses, if any, of the sale;
- 61 (7) where head (6) supra applies, the net proceeds of sale, being the difference between the gross amount shown in accordance with the requirement in head (5) supra and the total of the expenses shown in accordance with the requirement in head (6) supra;
- 62 (8) the amount which would have been payable under the agreement under which the article was taken in pawn if the article had been redeemed on the date of the sale;
- 63 (9) where the net proceeds of sale are not less than the sum which, if the article taken in pawn had been redeemed on the date of the sale, would have been payable for its redemption, the amount of any surplus payable to the debtor;
- 64 (10) in a case where head (9) supra does not apply, the amount by which the net proceeds of sale fall short of the sum which would have been payable for the redemption of the article taken in pawn on the date of the sale, being the amount for which the debtor remains liable under the Consumer Credit Act 1974 s 121(4) (see para 217 post).

UPDATE

200-223 Security

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

216 Realisation of pawns

NOTE 6--SI 2004/1568 Sch 1 amended: SI 2004/3262.

NOTE 13--SI 2004/1568 Sch 2 amended: SI 2004/3262.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/7. SECURITY/(4) PAWNS AND PLEDGES/217. Disposal of proceeds of sale.

217. Disposal of proceeds of sale.

Where a sale has been carried out under the statutory provisions¹ and the net proceeds of sale² are not less than the sum which, if the pawn³ had been redeemed⁴ on the date of the sale, would have been payable for its redemption, the debt secured by the pawn is discharged and any surplus must be paid by the pawnee to the pawnor⁵.

Where the net proceeds are less than the sum payable for redemption, the debt is to be treated as from the date of sale as equal to the amount by which the net proceeds of sale fall short of the sum which would have been payable for the redemption of the pawn on that date⁶.

If the pawnor alleges that the gross amount is less than the true market value of the pawn on the date of sale, it is for the pawnee to prove that he and any agents employed by him in the sale used reasonable care to ensure that the true market value was obtained⁷. Failure by the pawnee to show that the true market value was obtained results in the net proceeds of sale being calculated by reference to the true market value and not the gross proceeds of sale⁸. Similarly, if the pawnor alleges that the expenses of the sale were unreasonably high, it is for the pawnee to prove that they were reasonable, and if he fails to do so results in the net proceeds being calculated with reference to reasonable expenses only⁹.

1 As to these provisions see para 216 ante.

2 The 'net proceeds of sale' is the amount realised (the 'gross amount') less the expenses (if any) of the sale: Consumer Credit Act 1974 s 121(5).

3 For the meaning of 'pawn' see para 208 note 3 ante.

4 As to redemption see para 213 ante.

5 Consumer Credit Act 1974 s 121(3). For the meaning of 'pawnee' and 'pawnor' see para 208 note 3 ante. Section 121 does not apply to a pledge of documents of title or of bearer bonds or to a non-commercial agreement: see para 208 ante.

6 Ibid s 121(4).

7 Ibid s 121(6).

8 Ibid s 121(6).

9 Ibid s 121(7).

UPDATE

200-223 Security

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/7. SECURITY/(4) PAWNS AND PLEDGES/218. Unreasonable refusal to deliver pawn.

218. Unreasonable refusal to deliver pawn.

If a person who has taken a pawn¹ under a regulated agreement² refuses without reasonable cause to allow the pawn to be redeemed³, he commits an offence⁴. On the conviction of a pawnee⁵ under this provision where the offence does not amount to theft, the statutory provisions as to orders for restitution⁶ apply as if the pawnee had been convicted of stealing the pawn⁷.

- 1 For the meaning of 'pawn' see para 208 note 3 ante.
- 2 For the meaning of 'regulated agreement' see para 79 ante.
- 3 As to redemption see para 213 ante.

4 Consumer Credit Act 1974 s 119(1). An offence under s 119(1) is punishable on summary conviction only by a fine not exceeding level 4 on the standard scale: s 167(1), Sch 1 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see para 202 note 19 ante.

The Consumer Credit Act 1974 s 119 does not apply to a pledge of documents of title or of bearer bonds or to a non-commercial agreement: see para 208 ante.

- 5 For the meaning of 'pawnee' see para 208 note 3 ante.
- 6 Ie under the Theft Act 1968 s 28 and any provision of that Act relating to s 28 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 388).
- 7 Consumer Credit Act 1974 s 119(2).

UPDATE

200-223 Security

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

218 Unreasonable refusal to deliver pawn

NOTE 6--1968 Act s 28 now Powers of Criminal Courts (Sentencing) Act 2000 s 148.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/7. SECURITY/(5) NEGOTIABLE INSTRUMENTS/219. Restrictions on taking and negotiating instruments.

(5) NEGOTIABLE INSTRUMENTS

219. Restrictions on taking and negotiating instruments.

Certain restrictions are placed by the Consumer Credit Act 1974 on the taking and negotiating of instruments under regulated agreements¹. In particular, a creditor² or owner³ must not take a negotiable instrument, other than a bank note or cheque, in discharge of any sum payable by the debtor⁴ or hirer⁵ under a regulated agreement, or by any person as surety⁶ in relation to the agreement⁷. The creditor or owner must not negotiate a cheque taken by him in discharge of a sum payable as mentioned above except to a banker⁸ and must not take a negotiable instrument as security⁹ for the discharge of any sum payable as mentioned above¹⁰.

1 See the Consumer Credit Act 1974 ss 123-125; the Consumer Credit (Negotiable Instruments) (Exemption) Order 1984, SI 1984/435; and FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1472. For the meaning of 'regulated agreement' see para 79 ante.

2 For the meaning of 'creditor' see para 81 note 2 ante.

3 For the meaning of 'owner' see para 82 note 1 ante.

4 For the meaning of 'debtor' see para 81 note 3 ante.

5 For the meaning of 'hirer' see para 82 note 3 ante.

6 For the meaning of 'surety' see para 200 note 6 ante.

7 See the Consumer Credit Act 1974 s 123(1); and FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1472.

8 See ibid s 123(2); and FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1472.

9 For the meaning of 'security' see para 200 note 1 ante.

10 See the Consumer Credit Act 1974 s 123(3); and FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1472.

UPDATE

200-223 Security

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/7. SECURITY/(6) ENFORCEMENT OF SECURITIES/220. Enforcement of land mortgages and other securities.

(6) ENFORCEMENT OF SECURITIES

220. Enforcement of land mortgages and other securities.

A land mortgage¹ securing a regulated agreement² is enforceable (so far as provided in relation to the agreement) on an order of the court only³. Subject to compliance with the default notice provisions⁴ and the provisions for limitation of enforcement of securities⁵, the creditor's⁶ right to enforce and realise other valid and properly executed securities is governed by the general law and such other legislation as may be relevant⁷.

1 For the meaning of 'land mortgage' see para 100 note 19 ante. For the meaning of 'land' see para 93 note 2 ante. For the meaning of 'security' see para 200 note 1 ante.

2 For the meaning of 'regulated agreement' see para 79 ante.

3 Consumer Credit Act 1974 s 126. For the meaning of 'court' see para 134 note 9 ante. As to the opportunity to withdraw from a prospective land mortgage see s 58; and para 182 ante.

4 Ie ibid ss 87, 88: see paras 263-264 post.

5 Ie ibid s 113: see para 221 post.

6 For the meaning of 'creditor' see para 81 note 2 ante.

7 Eg the Bills of Sale Acts, in the case of written chattel mortgages granted by an individual: see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1620 et seq.

UPDATE

200-223 Security

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/7. SECURITY/(6) ENFORCEMENT OF SECURITIES/221. Limitation on enforcement of securities.

221. Limitation on enforcement of securities.

Where a security¹ is provided in relation to an actual or prospective regulated agreement², the security must not be enforced so as to benefit the creditor³ or owner⁴, directly or indirectly, to an extent greater (whether as respects the amount of any payment⁵ or the time or manner of its being made) than would be the case if the security were not provided and any obligations of the debtor⁶ or hirer⁷, or his relative⁸, under or in relation to the agreement were carried out to the extent (if any) to which they would be enforced under the Consumer Credit Act 1974⁹. In accordance with this, where a regulated agreement is enforceable on an order of the court¹⁰ or the Director General of Fair Trading¹¹ only, any security provided in relation to the agreement is enforceable (so far as provided in relation to the agreement) where such an order has been made in relation to the agreement, but not otherwise¹².

Moreover, in cases of cancellation¹³, certain cases of termination¹⁴, and on the dismissal of an application for an enforcement order¹⁵ or declaration as to the creditor's rights¹⁶, special provision¹⁷ is made as to the return or cancellation of such security, and as to associated matters¹⁸.

All the above provisions apply, mutatis mutandis¹⁹, where a security is provided in relation to an actual or prospective linked transaction²⁰.

- 1 For the meaning of 'security' see para 200 note 1 ante.
- 2 For the meaning of 'regulated agreement' see para 79 ante. If the security is provided in relation to a prospective agreement or transaction, it is enforceable in relation to the agreement or transaction only after the time (if any) when the agreement is made; and until that time the person providing the security is entitled, by notice to the creditor or owner, to require that the Consumer Credit Act 1974 s 106 (see para 222 post) must thereupon apply to the security: s 113(6).
- 3 For the meaning of 'creditor' see para 81 note 2 ante.
- 4 For the meaning of 'owner' see para 82 note 1 ante.
- 5 As to the meaning of 'payment' see para 84 note 5 ante.
- 6 For the meaning of 'debtor' see para 81 note 3 ante.
- 7 For the meaning of 'hirer' see para 82 note 3 ante.
- 8 For the meaning of 'relative' see para 116 note 12 ante.
- 9 Consumer Credit Act 1974 s 113(1). Where an indemnity or guarantee is given in a case where the debtor or hirer is a minor, or an indemnity is given in a case where he is otherwise not of full capacity, the reference to the extent to which his obligations would be enforced must be read in relation to the indemnity or guarantee as a reference to the extent to which those obligations would be enforced if he were of full capacity: s 113(7) (amended by the Minors' Contracts Act 1987 s 4(1)). As to contracts of indemnity and guarantee generally see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1013 et seq. As to capacity to contract see CONTRACT vol 9(1) (Reissue) para 630 post.
- 10 For the meaning of 'court' see para 134 note 9 ante.
- 11 As to the Director General of Fair Trading see para 110 ante.
- 12 Consumer Credit Act 1974 s 113(2).

13 le under *ibid* s 69 (see para 185 ante): s 113(3)(a). 'Cancellation' here extends to include partial cancellation under s 69(2): see s 113(3)(a). The duties as to the repayment of credit (see s 71; and para 187 ante) and the return of goods (see s 72; and para 188 ante) which are imposed on the debtor or hirer in the event of cancellation are not enforceable before the creditor or owner has discharged his duties by virtue of this provision: s 113(5).

14 le under *ibid* s 91 (see para 265 post): s 113(3)(b).

15 le an application for the enforcement of (1) an agreement made with an unlicensed creditor (see *ibid* s 40(2); and para 125 ante); (2) an improperly executed agreement (see s 65(1); and para 169 ante); (3) an agreement where the creditor or owner has accepted a negotiable instrument in payment of a sum due under it (see s 124(1); and FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1472); and (4) an agreement made on the introduction of an unlicensed credit-broker (see s 149(2); and para 278 post): see s 113(3)(c). In all cases the dismissal must be on other than technical grounds only: s 113(3)(c). As to the meaning of 'technical grounds' see para 200 note 18 ante.

16 le a declaration by a court that the creditor or owner is not entitled to do a thing (see *ibid* s 142(1); and para 291 post): s 113(3)(d). In such a case, if the declaration relates to a part only of the regulated agreement, s 106 (ineffective securities: see para 222 post) applies to the security only so far as it concerns that part: s 113(4).

17 le *ibid* s 106: see para 222 post.

18 *Ibid* s 113(3).

19 le all references in the statutory provisions to the agreement must be read as references to the linked transaction (*ibid* s 113(8)(a)); and references to the creditor or owner must be read as references to any person, other than the debtor or hirer, or his relative, who is a party, or prospective party, to the linked transaction (s 133(8)(b)). As to linked transactions see paras 90, 196-198 ante.

20 *Ibid* s 113(8).

UPDATE

200-223 Security

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

221 Limitation on enforcement of securities

NOTE 12--Consumer Credit Act 1974 s 113(2) amended: Enterprise Act 2002 Sch 25 para 6(27).

NOTE 20--As to the purpose of s 113(8), see *Citibank International plc v Schleider* (1999) Times, 26 March.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/7. SECURITY/(7) INVALIDATION OF SECURITIES/222. Ineffective securities.

(7) INVALIDATION OF SECURITIES

222. Ineffective securities.

In certain cases where a security is cancelled, terminated or rendered unenforceable, a series of provisions apply, designed to restore so far as possible the position which existed before the giving of the security¹.

Subject to a saving for registered charges², these provisions are that (1) the security, so far as it is provided in relation to a regulated agreement³, must be treated as never having effect⁴; (2) any property lodged with the creditor⁵ or owner⁶ solely for the purposes of the security as so provided must be returned by him forthwith⁷; (3) the creditor or owner must take any necessary action to remove or cancel an entry in any register, so far as the entry relates to the security as so provided⁸; and (4) any amount received by the creditor or owner on realisation of the security must, so far as it is referable to the agreement, be repaid to the surety⁹.

1 See the Consumer Credit Act 1974 s 106. Section 106 is applied by s 105(8) (see para 200 text and note 20 ante) and s 113(3)-(6) (see para 221 ante). For the meaning of 'security' see para 200 note 1 ante.

2 See *ibid* s 177; and para 223 post.

3 For the meaning of 'regulated agreement' see para 79 ante.

4 Consumer Credit Act 1974 s 106(a).

5 For the meaning of 'creditor' see para 81 note 2 ante.

6 For the meaning of 'owner' see para 82 note 1 ante.

7 Consumer Credit Act 1974 s 106(b).

8 *Ibid* s 106(c).

9 *Ibid* s 106(d). For the meaning of 'surety' see para 200 note 6 ante.

UPDATE

200-223 Security

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/7. SECURITY/(8) REGISTERED CHARGES/223. Registered charges.

(8) REGISTERED CHARGES

223. Registered charges.

Nothing in the Consumer Credit Act 1974 affects the rights of a proprietor of a registered charge¹, who (1) became the proprietor under a transfer for valuable consideration² without notice of any defect in the title arising (apart from this provision) by operation of the Act³, or (2) derives title from such a proprietor⁴. This protection does not apply to a proprietor carrying on the business of debt-collecting⁵. Where a land mortgage⁶ is enforced⁷ which apart from this provision would be treated as never having effect⁸, the original creditor or owner⁹ is liable to indemnify the debtor or hirer¹⁰ against any loss thereby suffered by him¹¹.

Nothing in the Consumer Credit Act 1974 affects the protection afforded¹² to a purchaser from a mortgagee who is exercising a power of sale¹³.

1 Le within the meaning of the Land Registration Act 1925 (see ss 3(xx), 33(2); and LAND REGISTRATION).

2 For the meaning of 'valuable consideration' in the context of land registration see the Land Registration Act 1925 s 3(xxxii); and LAND REGISTRATION.

3 Consumer Credit Act 1974 s 177(1)(a). This protection is almost identical to that conferred generally by the Land Registration Act 1925 s 33(3): see further LAND REGISTRATION.

4 Consumer Credit Act 1974 s 177(1)(b).

5 Ibid s 177(3).

6 For the meaning of 'land mortgage' see para 100 note 19 ante.

7 Le by virtue of the Consumer Credit Act 1974 s 177(1): see the text and notes 1-4 supra.

8 For cases where a security (including a land mortgage) is treated as never having had effect see para 222 ante.

9 For the meaning of 'creditor' see para 81 note 2 ante; and for the meaning of 'owner' see para 82 note 1 ante.

10 For the meaning of 'debtor' see para 81 note 3 ante; and for the meaning of 'hirer' see para 82 note 3 ante.

11 Consumer Credit Act 1974 s 177(4).

12 Le under the Law of Property Act 1925 s 104(2): see MORTGAGE vol 77 (2010) PARA 468.

13 Consumer Credit Act 1974 s 177(2).

UPDATE

200-223 Security

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory

Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

223 Registered charges

NOTE 1--Now refers to the Land Registration Act 2002 (see LAND REGISTRATION): Consumer Credit Act 1974 s 177(1) (amended by the Land Registration Act 2002 Sch 11 para 11).

TEXT AND NOTE 5--1974 Act s 177(3) amended: Consumer Credit Act 2006 s 24(5).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/8. CHARGES FOR CREDIT/(1) IN GENERAL/224. Power to make regulations.

8. CHARGES FOR CREDIT

(1) IN GENERAL

224. Power to make regulations.

It is one of the fundamental principles of consumer credit legislation that the true cost of credit to the borrower should be fully disclosed by the lender¹. Accordingly, the Secretary of State² has power to make regulations³ containing such provisions as appear to him appropriate for determining the true cost to the debtor⁴ of the credit⁵ provided or to be provided under an actual or prospective consumer credit agreement⁶ (the 'total charge for credit')⁷. Such regulations must prescribe (1) what items are to be treated as entering into the total charge for credit, and how their amount is to be ascertained⁸; and (2) the method of calculating the rate of the total charge for credit⁹.

The regulations may provide for the whole or part of the amount payable by the debtor or his relative¹⁰ under any linked transaction¹¹ to be included in the total charge for credit, whether or not the creditor¹² is a party to the transaction or derives benefit from it¹³.

1 See *Report of the Crowther Committee on Consumer Credit* (Cmnd 4596) (1971) paras 6.5.15-6.5.21. As to the Crowther Report see para 8 ante.

2 As to the Secretary of State see para 113 ante.

3 For the meaning of 'regulations' see para 114 note 2 ante. As to the power to make regulations see para 114 post.

4 For the meaning of 'debtor' see para 81 note 3 ante.

5 For the meaning of 'credit' see para 83 ante.

6 For the meaning of 'consumer credit agreement' see para 81 ante.

7 Consumer Credit Act 1974 s 20(1). The regulations so made are the Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51 (as amended): see para 225 et seq post.

As to the total charge for credit see also *Huntpast Ltd v Leadbeater* [1993] CCLR 15, CA.

8 Consumer Credit Act 1974 s 20(1)(a).

9 Ibid s 20(1)(b).

10 For the meaning of 'relative' see para 116 note 12 ante.

11 As to linked transactions see paras 90, 196-198 ante.

12 For the meaning of 'creditor' see para 81 note 2 ante.

13 Consumer Credit Act 1974 s 20(2).

UPDATE

224-226 Power to make regulations ... Items excluded from the total charge for credit

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/8. CHARGES FOR CREDIT/(1) IN GENERAL/225. Total charge for credit.

225. Total charge for credit.

The Consumer Credit (Total Charge for Credit) Regulations 1980¹ provide that for the purposes of the Consumer Credit Act 1974, the total charge for the credit² which may be provided under an actual or prospective agreement³ is the total of the amounts of such of the following charges, determined as at the date of the making of the agreement, as apply in relation to the agreement, but excluding certain specified charges⁴. Those charges are (1) the total of the interest on the credit which may be provided under the agreement⁵; and (2) other charges at any time payable under the transaction⁶ by or on behalf of the debtor or a relative of his whether to the creditor or any other person⁷, notwithstanding that the whole or part of the charge may be repayable at any time or that the consideration therefor may include matters not within the transaction or subsisting at a time not within the duration of the agreement⁸.

1 Ie the Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51 (as amended). These regulations are made under the Consumer Credit Act 1974 s 20(1); see para 224 ante. As to the power to make regulations generally see para 114 ante. For the meaning of 'regulations' see para 114 note 2 ante.

2 For the meaning of 'credit' see para 83 ante.

3 'Agreement' means a consumer credit agreement: Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, reg 1(2). For the meaning of 'consumer credit agreement' see para 81 ante.

4 Ibid reg 3. The excluded charges are specified in reg 5: see para 226 post.

5 Ibid reg 4(a). In determining the amount of the total of the interest on the credit which may be provided under the agreement, any subsidy receivable by any person under the housing legislation must be deducted: reg 2(3). Regulation 2(3) refers to the Housing Subsidies Act 1967 Pt II, but this has been repealed: see now the Housing Act 1985; and HOUSING.

6 'Transaction' (except in the Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, reg 5(1)(c): see para 226 head (3) post) means (1) an agreement; (2) any transaction which is a linked transaction by virtue of the Consumer Credit Act 1974 s 19(1)(a) (see para 196 head (1) ante); (3) any contract for the provision of security relating to the agreement; (4) any credit brokerage contract relating to the agreement; and (5) any other contract to which the debtor or a relative of his is a party and which the creditor requires to be made or maintained as a condition of the making of the agreement: Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, reg 1(2). For the meaning of 'security' see para 200 note 1 ante. As to credit brokerage see para 272 post. For the meaning of 'debtor' see para 81 note 3 ante; for the meaning of 'relative' see para 116 note 12 ante; and for the meaning of 'creditor' see para 81 note 2 ante.

As to charges payable under the transaction see *Huntpast Ltd v Leadbeater* [1993] CCLR 15, CA. See also *Humberclyde Finance plc v Thompson* [1997] CCLR 23, CA.

7 Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, reg 4(b).

8 Ibid reg 4.

UPDATE

224-226 Power to make regulations ... Items excluded from the total charge for credit

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory

Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

225 Total charge for credit

NOTE 4--In determining whether a charge in an agreement is part of the total charge for the credit or part of the credit itself, the court may well impartially determine the purpose of the loan: *Watchtower Investments Ltd v Payne* (2001) Times, 22 August, CA, considered in *McGinn v Grangewood Securities Ltd* [2002] EWCA Civ 522, [2002] All ER (D) 184 (Apr) (see further PARA 168).

TEXT AND NOTES 7--Add head (3) a premium under a contract of insurance, payable under the transaction by the debtor or a relative of his, where the making or maintenance of the contract of insurance is required by the creditor as a condition of making the agreement, and for the sole purpose of ensuring complete or partial repayment of the credit, and complete or partial payment to the creditor of such of those charges included in the total charge for credit as are payable to him under the transaction, in the event of the death, invalidity, illness or unemployment of the debtor: SI 1980/51 reg 4(c) (inserted by SI 1999/3177).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/8. CHARGES FOR CREDIT/(1) IN GENERAL/226. Items excluded from the total charge for credit.

226. Items excluded from the total charge for credit.

The amounts of the following items are not included in the total charge for credit¹ in relation to an agreement²:

- 102 (1) any charge payable under the transaction³ to the creditor upon failure by the debtor or a relative of his to do or to refrain from doing anything which he is required to do or to refrain from doing, as the case may be⁴;
- 103 (2) any charge (a) which is payable by the creditor to any person upon failure by the debtor or a relative of his to do or to refrain from doing anything which he is required under the transaction to do or to refrain from doing, as the case may be⁵; and (b) which the creditor may under the transaction require the debtor or a relative of his to pay to him or to another person on his behalf⁶;
- 104 (3) any charge relating to an agreement which is an agreement to finance⁷ a transaction of a specified description⁸, being a charge which would be payable if the transaction were for cash⁹;
- 105 (4) any charge (other than a fee or commission charged by a credit-broker) not within head (3) above (a) of a description which relates to services or benefits incidental to the agreement and also to other services or benefits which may be supplied to the debtor¹⁰; and (b) which is payable pursuant to an obligation incurred by the debtor under arrangements effected before he applies to enter into the agreement, not being arrangements under which the debtor is bound to enter into any personal credit agreement¹¹;
- 106 (5) any charge under arrangements for the care, maintenance or protection of any land or goods¹²;
- 107 (6) charges for money transmission services relating to an arrangement for a current account whereby the debtor may, by cheques or similar orders payable to himself or to any other person, obtain or have the use of money held or made available by the creditor and which records alterations in the financial relationship between the creditor and debtor, being charges which vary with the use made by the debtor of the arrangement¹³;
- 108 (7) a premium under a contract of insurance made before the debtor applies to enter into the agreement¹⁴;
- 109 (8) a premium under a contract of insurance in respect of risks relating to the use of a motor vehicle¹⁵;
- 110 (9) a premium under a contract of life insurance where the policy monies payable under the contract are, under the transaction, to be used for the repayment of the credit under the agreement or under any other personal credit agreement secured by a land mortgage¹⁶ forming part of the transaction or of the total charge for credit¹⁷;
- 111 (10) a premium under a contract of insurance the making or maintenance of which is not required by the creditor as a condition of the making of the agreement¹⁸;
- 112 (11) a premium under a contract of insurance against loss of, or damage to, land or to land and goods, being a contract which (a) is to be made or maintained by the debtor in a case where the agreement finances the acquisition by the debtor of an estate or interest in the land¹⁹; and (b) is required by another person (not being the creditor) having an estate or interest in the land to be made or maintained with a person specified by him²⁰; and

113 (12) a premium under any other contract of insurance²¹.

- 1 As to the 'total charge for credit' see para 225 ante. For the meaning of 'credit' see para 83 ante.
- 2 For the meaning of 'agreement' see para 225 note 3 ante.
- 3 For the meaning of 'transaction' see para 225 note 6 ante.
- 4 Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, reg 5(1)(a).
- 5 Ibid reg 5(1)(b)(i).
- 6 Ibid reg 5(1)(b)(ii).
- 7 For the meaning of 'finance' see para 83 note 8 ante.
- 8 Is referred to in the Consumer Credit Act 1974 s 11(1)(a) or s 11(1)(b) (restricted-use credit agreements) (see para 86 ante).
- 9 Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, reg 5(1)(c).
- 10 Ibid reg 5(1)(d)(i) (amended by SI 1989/596).
- 11 Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, reg 5(1)(d)(ii) (amended by SI 1989/596). For the meaning of 'personal credit agreement' see para 80 ante.
- 12 Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, reg 5(1)(e). For the meaning of 'land' see para 93 note 2 ante; and for the meaning of 'goods' see para 82 note 5 ante.

Generally, in the case of a charge within reg 5(1)(e), the provisions of reg 5(1) have effect only where, in pursuance of the arrangements (1) the services are to be performed if, after the date of the making of the agreement, the condition of the land or goods becomes or is in immediate danger of becoming such that the land or goods cannot reasonably be enjoyed or used (reg 5(2)(a)(i)); and (2) the charge will not accrue unless the services are performed (reg 5(2)(a)(ii)).

In the case of any other charge within reg 5(1)(e) and of any charge within reg 5(1)(l) (see the text and note 21 infra), the provisions of reg 5(1) have effect only (a) where provision of substantially the same description as that to which the arrangements or contract of insurance relate is available under comparable arrangements from a person who is not the creditor or a supplier or a credit-broker who introduced the debtor and the creditor (reg 5(2)(b)(i)); and (b) where the arrangements or contract of insurance are made with a person chosen by the debtor (reg 5(2)(b)(ii)); and (c) if, in accordance with the transaction, the consent of the creditor or of a supplier or of the credit-broker who introduced the debtor and the creditor is required to the making of the arrangements or contract of insurance, where the transaction provides that such consent may not be unreasonably withheld whether because no incidental benefit will or may accrue to the creditor or to the supplier or to the credit-broker or on any other ground (reg 5(2)(b)(iii)).

In reg 5(2) 'creditor', 'supplier' and 'credit-broker' each includes his near relative, his partner and a member of a group of which he is a member, any person nominated by him or any such person in relation to the arrangements or the contract of insurance, and to a near relative of his partner; and 'near relative' means, in relation to any person, the husband, wife, father, mother, brother, sister, son or daughter of that person and 'group' means the person (including a company) having control of a company together with all the companies directly or indirectly controlled by him: reg 5(2).

- 13 Ibid reg 5(1)(f).
- 14 Ibid reg 5(1)(g).
- 15 Ibid reg 5(1)(h).
- 16 For the meaning of 'land mortgage' see para 100 note 19 ante.
- 17 Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, reg 5(1)(i) (amended by SI 1985/1192). Repayment of credit under an agreement includes any repayment of any part of the credit: Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, reg 1(4).
- 18 Ibid reg 5(1)(j).
- 19 Ibid reg 5(1)(k)(i).

20 Ibid reg 5(1)(k)(ii).

21 Ibid reg 5(1)(l). Regulation 5(1)(l) is subject to reg 5(2)(b) (see note 12 supra).

UPDATE

224-226 Power to make regulations ... Items excluded from the total charge for credit

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

226 Items excluded from the total charge for credit

NOTE 12--After 'in the case of any other charge within reg 5(1)(e)' the second time it occurs, delete 'and of any charge within reg 5(1)(l)': SI 1980/51 reg 5(2)(b), amended by SI 1999/3177.

In head (a) after 'to which the arrangements', delete 'or contract of insurance': SI 1980/51 reg 5(2)(b)(i) (amended by SI 1999/3177).

In head (b) after 'where the arrangements', delete 'or contract of insurance': SI 1980/51 reg 5(2)(b)(ii) (amended by SI 1999/3177).

In head (c) after 'making of the arrangements', delete 'or contact of insurance': SI 1980/51 reg 5(2)(b)(iii) (amended by SI 1999/3177).

In the meaning of 'creditor', 'supplier' and 'credit-broker', delete 'or the contract of insurance': SI 1980/51 reg 5(2) (amended by SI 1999/3177).

TEXT AND NOTES 14-21--SI 1980/51 regs 5(1)(g)-(l) replaced. For head (7) now read: 'any charge for a guarantee other than a guarantee which is required by the creditor as a condition of making the agreement, and the purpose of which is to ensure complete or partial repayment of the credit, and complete or partial payment to the creditor of such of those charges included in the total charge for credit as are payable to him under the transaction, in the event of the death, invalidity, illness or unemployment of the debtor': SI 1980/51 reg 5(1)(g) (substituted by SI 1999/3177). For head (8) now read 'charges for the transfer of funds (other than charges within head (6) and charges for keeping an account intended to receive payments towards the repayment of the credit and the payment of interest and other charges, except where the debtor does not have reasonable freedom of choice in the matter and where such charges are abnormally high, but this sub-paragraph does not exclude from the total charge for credit charges for collection of the payments to which it refers, whether such payments are made in cash or otherwise)': SI 1980/51 reg 5(1)(h) (substituted by SI 1999/3177). For head (9) now read 'a premium under a contract of insurance other than a contract of insurance payable under the transaction by the debtor or a relative of his, where the making or maintenance of the contract of insurance is required by the creditor (1) as a condition of making the agreement; and (2) for the sole purpose of ensuring complete or partial repayment of the credit, and complete or partial payment to the creditor of such of those charges included in the total charge for credit as are payable to him

under the transaction, in the event of the death, invalidity, illness or unemployment of the debtor': SI 1980/51 reg 5(1)(i) (substituted by SI 1999/3177).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/8. CHARGES FOR CREDIT/(2) CALCULATION/227. Rate computation and disclosure.

(2) CALCULATION

227. Rate computation and disclosure.

Any calculation of the total charge for credit¹ must be made on the following assumptions:

114 (1) the assumption that the debtor² will normally not be entitled to any income tax relief relating to the transaction³;

115 (2) the assumption that no assistance is given under the relevant housing legislation⁴;

116 (3) the assumption:

5

12. (a) in the case of a transaction which provides for repayment of the credit or of the total charge for credit at or not later than a specified time or times, that the creditor⁵ will not exercise any right under the transaction to require repayment at any other time or times⁶; and

13. (b) in any other case, that the creditor will not exercise any right under the transaction to require repayment⁷,

6

117 the debtor, in any case, performing all his obligations under the transaction⁸; and

118 (4) in the case of a transaction which provides for variation of the rate or amount of any item included in the total charge for credit in consequence of the occurrence after the relevant date of any event⁹, the assumption that the event will not occur¹⁰.

In the case of any agreement each provision of credit and each repayment of the credit and of the total charge for credit are taken to be made (i) at the earliest time provided under the transaction¹¹; and (ii) in a case where any such provision or repayment is to be made at or not later than a specified time, at that time¹² and, where any such repayment is to be made before the relevant date¹³, it is taken to be made on the relevant date¹⁴.

Where under an agreement for running-account credit or an agreement for fixed-sum credit¹⁵ where the credit is not repayable at specified intervals or in specified amounts a constant period rate of charge in respect of periods of equal or of nearly equal length is charged, it is assumed for the purposes of calculations of the total charge for credit¹⁶ that (A) the amount of credit outstanding at the beginning of a period is to remain outstanding throughout the period; (B) the amount of any credit provided during a period is provided immediately after the end of the period; and (C) any repayment of credit or of the total charge for credit made during a period is made immediately after the end of the period¹⁷.

It is to be assumed that the amount of any repayment of credit or of the total charge for credit will, at the time when the repayment is made, be the smallest for which the agreement provides¹⁸.

1 Le under the Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51 (as amended). As to the total charge for credit see para 225 ante. For the meaning of 'credit' see para 83 ante.

2 For the meaning of 'debtor' see para 81 note 3 ante.

3 See the Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, reg 2(1)(a). For the meaning of 'transaction' see para 225 note 6 ante. As to income tax relief see INCOME TAXATION.

4 See *ibid* reg 2(1)(b). The legislation referred to is the Home Purchase Assistance and Housing Corporation Guarantee Act 1978 (repealed); see now the Housing Act 1985 ss 445-449 (as amended); and HOUSING vol 22 (2006 Reissue) paras 697-699.

5 For the meaning of 'creditor' see para 81 note 2 ante. Repayment of the credit under an agreement and of the total charge for credit includes any repayment or payment, as the case may require, of any part of the credit and of the total charge for credit: *ibid* reg 1(4).

6 *Ibid* reg 2(1)(c)(i).

7 *Ibid* reg 2(1)(c)(ii).

8 *Ibid* reg 2(1)(c).

9 'Event' means an act or omission of the debtor or of the creditor or any other event (including where the transaction makes provision for variation upon the continuation of any circumstance, the continuation of that circumstance) but does not include an event which is certain to occur and of which the date of occurrence, or the earliest date of occurrence, can be ascertained at the date of the making of the agreement: *ibid* reg 2(1)(d).

10 *Ibid* reg 2(1)(d). As to the application of this regulation see *National Westminster Bank plc v Devon County Council* [1993] CCLR 69, DC; *Scarborough Building Society v Humberside Trading Standards Department* [1997] CCLR 47, DC (in these cases, the courts reached diametrically opposite conclusions).

11 Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, reg 2(2)(a)(i).

12 *Ibid* reg 2(2)(a)(ii).

13 'The relevant date' means, in a case where a date is specified in or determinable under an agreement at the date of its making as that on which the debtor is entitled to require provision of anything the subject of the agreement, the earliest such date and, in any other case, the date of the making of the agreement: *ibid* reg 1(2).

14 *Ibid* reg 2(2)(a). Regulation 2(2)(a) is subject to reg 2(2)(b) (see the text and note 17 infra) and reg 18 (see para 233): reg 2(2)(a).

15 For the meaning of 'fixed-sum credit' see para 85 ante; and for the meaning of 'running-account credit' see para 84 ante.

16 This assumption is valid notwithstanding the Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, reg 17 (see para 233 ante).

17 *Ibid* reg 2(2)(b).

18 *Ibid* reg 2(2)(c).

UPDATE

227 Rate computation and disclosure

TEXT AND NOTES 1-10--Add head (5) In the case of a land-related agreement which provides for the possibility of any variation of the rate of interest in consequence of the occurrence after the relevant date of any event (being an event which is certain to occur and of which the date of occurrence, or the earliest date of occurrence, can be ascertained at the date of the making of the agreement), the assumption that such a variation will, when the event occurs, take place: SI 1980/51 reg 2(1)(e) (inserted by SI 1999/3177). 'Land-related agreement' means an agreement which is intended primarily to finance the acquisition or retention of land or intended to finance the renovation or improvement of a building or any other agreement secured by a mortgage on land: SI 1980/51 reg 1(2) (amended by SI 1999/3177).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/8. CHARGES FOR CREDIT/(2) CALCULATION/228. The annual percentage rate (APR).

228. The annual percentage rate (APR).

The rate of the total charge for credit¹ in the case of an actual or prospective agreement² is the annual percentage rate (the 'APR')³ of charge determined in accordance with prescribed provisions⁴ and such determination must be to one decimal place, further decimal places being disregarded⁵.

1 As to the total charge for credit see para 225 ante. For the meaning of 'credit' see para 83 ante.

2 For the meaning of 'agreement' see para 225 note 3 ante.

3 For the meaning of 'the APR' see para 163 note 37 ante. As to provisions relating to the prominence to be given to the APR in credit agreements and in credit advertisements see the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 2(6) (as amended); the Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, reg 8; and paras 146, 163 note 37 ante. As to provisions relating to the disclosure of the APR see the Consumer Credit (Agreements) Regulations 1983, SI 1983/1553, reg 1(2), Sch 7; the Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125, reg 1(2), Sch 3; and paras 146, 163 ante.

4 Ie the Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, Pt III (regs 7-11): see paras 229-232 post.

5 Ibid reg 6.

UPDATE

228 The annual percentage rate (APR)

TEXT AND NOTE 5--Delete from 'such determination ... disregarded' and substitute 'where it has more than one decimal place, rounded to one decimal place': SI 1980/51 reg 6 (amended by SI 1999/3177). The annual percentage rate of charge must be rounded to one decimal place as follows: (1) where the figure at the second decimal place is greater than or equal to 5, the figure at the first decimal place must be increased by one and the decimal place (or places) following the first decimal place must be disregarded; and (2) where the figure at the second decimal place is less than 5, that decimal place and any decimal places following it must be disregarded: SI 1980/51 reg 6A (inserted by SI 1999/3177).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/8. CHARGES FOR CREDIT/(2) CALCULATION/229. Calculation where a period rate is charged.

229. Calculation where a period rate is charged.

In the case of (1) an agreement¹ under which the only charge for credit² is a constant period rate of charge³ in respect of periods of equal length being either (a) an agreement for running-account credit⁴; or (b) an agreement for fixed-sum credit where the credit is not repayable at specified intervals or in specified amounts⁵; and (2) an agreement for fixed-sum credit under which (a) the only charge for credit is a constant period rate of charge in respect of periods of equal length⁶; (b) credit is outstanding throughout one or more such periods⁷; and (c) every repayment of credit and of the total charge for credit is made at the end of such a period⁸, the annual percentage rate of charge⁹ is given by a prescribed formula¹⁰.

1 For the meaning of 'agreement' see para 225 note 3 ante.

2 For the meaning of 'credit' see para 83 ante.

3 'Period rate of charge' means a percentage rate of charge for a period, comprising all charges included in the total charge for credit determined in accordance with the Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, Pt II (regs 3-5) (see paras 225-226 ante): reg 7(2). As to the total charge for credit see para 225 ante.

4 Ibid reg 7(1)(a)(i). For the meaning of 'running-account credit' see para 84 ante.

5 Ibid reg 7(1)(a)(ii). For the meaning of 'fixed-sum credit' see para 85 ante.

6 Ibid reg 7(1)(b)(i).

7 Ibid reg 7(1)(b)(ii).

8 Ibid reg 7(1)(b)(iii). Repayment of the credit under an agreement and of the total charge for credit includes any repayment or payment, as the case may require, of any part of the credit and of the total charge for credit: reg 1(4).

9 As to the annual percentage rate of charge see para 228 ante.

10 The formula prescribed is:

$$100 \left[\left(1 + \frac{x}{100} \right)^y - 1 \right]$$

where x is the period rate of charge expressed as a percentage, and y is the number of periods in a year in relation to which the period rate of charge is charged: Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, reg 7(1).

UPDATE

229-231 Calculation where a period rate is charged ... Calculation applicable to any agreement

Replaced. As to the calculation of the annual percentage rate of charge, see SI 1980/51 reg 7 (substituted by SI 1999/3177). SI 1980/51 regs 8-10 revoked and not replaced: SI 1999/3177.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/8. CHARGES FOR CREDIT/(2) CALCULATION/230. Calculation where fixed-sum credit is provided and repayable in single lump sum.

230. Calculation where fixed-sum credit is provided and repayable in single lump sum.

In the case of an agreement¹ for fixed-sum credit² provided in a single lump sum repayable at the end of a specified period in a single lump sum being repayment of the credit and of the total charge for credit³, the annual percentage rate of charge⁴ is given by a prescribed formula⁵.

- 1 For the meaning of 'agreement' see para 225 note 3 ante.
- 2 For the meaning of 'fixed-sum credit' see para 85 ante.
- 3 As to the total charge for credit see para 225 ante. For the meaning of 'credit' see para 83 ante. Repayment of the credit under an agreement and of the total charge for credit includes any repayment or payment, as the case may require, of any part of the credit and of the total charge for credit: Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, reg 1(4).
- 4 As to the annual percentage rate of charge see para 228 ante.
- 5 The formula prescribed is:

$$100 \left[\left(1 + \frac{C}{P} \right)^{\frac{1}{t}} - 1 \right]$$

where C is the total charge for credit; P is the amount of the credit, and t is the period beginning with the relevant date and ending with the date of repayment expressed in years: Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, reg 8.

UPDATE

229-231 Calculation where a period rate is charged ... Calculation applicable to any agreement

Replaced. As to the calculation of the annual percentage rate of charge, see SI 1980/51 reg 7 (substituted by SI 1999/3177). SI 1980/51 regs 8-10 revoked and not replaced: SI 1999/3177.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/8. CHARGES FOR CREDIT/(2) CALCULATION/231. Calculation applicable to any agreement.

231. Calculation applicable to any agreement.

In relation to any agreement¹, the annual percentage rate of charge² is a rate per annum compounding annually expressed as a percentage such that (1) the sum of the present values as at the relevant date³ of all repayments of credit⁴ and of the total charge for credit⁵; and (2) the sum of the present values as at the relevant date of all credit under the agreement⁶, would, when calculated at that rate, be equal⁷.

In a case where more than one rate per annum is given under the foregoing provisions, the annual percentage rate of charge is the positive rate per annum nearest to zero or, if no positive rate is so given, the negative rate nearest to zero⁸.

In the case of an agreement to which an entry in a rate table⁹ exactly applies, the applicable rate set out in that table is taken to be the rate determined in accordance with the provisions for determining the total charge for credit¹⁰.

1 For the meaning of 'agreement' see para 225 note 3 ante.

2 As to the annual percentage rate of charge see para 228 ante.

3 'Present value as at the relevant date' of a sum to be paid on or before that date, is that sum: Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, reg 9(2)(a). 'Present value as at the relevant date' of a sum to be paid at a later date, is such a value as is given by the following formula:

$$\frac{A}{\left(1 + \frac{r}{100}\right)^t}$$

where A is the sum to be paid; r is the rate per annum expressed as a percentage, and t is the period beginning with the relevant date and ending with the date of payment of the sum expressed in years: reg 9(2)(b). For the meaning of 'relevant date' see para 227 note 13 ante.

4 For the meaning of 'credit' see para 83 ante.

5 Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, reg 9(1)(a). As to the total charge for credit see para 225 ante. Repayment of the credit under an agreement and of the total charge for credit includes any repayment or payment, as the case may require, of any part of the credit and of the total charge for credit: reg 1(4).

6 Ibid reg 9(1)(b).

7 Ibid reg 9(1).

8 Ibid reg 9(3).

9 The rate tables are contained in *Consumer Credit Tables, Parts 1 to 15* (HMSO, 1977) (as modified by correction slips published in December 1978) and are calculated in accordance with the principles set out in the Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51. The tables comprise the following:

65 Part 1: Charge per pound lent; equal weekly instalments up to one year

66 Part 2: Charge per pound lent; equal weekly instalments up to two years

67 Part 3: Charge per pound lent; equal weekly instalments two years and over

68 Part 4: Charge per pound lent; equal monthly instalments up to three years

- 69 Part 5: Charge per pound lent; equal monthly instalments three years and over
 - 70 Part 6: Charge per pound lent; equal quarterly instalments
 - 71 Part 7: Charge per pound lent; equal half-yearly and yearly instalments
 - 72 Part 8: Charge per pound lent; single repayment up to 33 weeks/10 months
 - 73 Part 9: Charge per pound lent; single repayment six months and over
 - 74 Part 10: Charge per pound lent; annual percentage rates of 100% and over
 - 75 Part 11: Flat rate; equal weekly instalments
 - 76 Part 12: Flat rate; equal monthly instalments
 - 77 Part 13: Flat rate; equal quarterly, half-yearly and yearly instalments
 - 78 Part 14: Flat rate; single repayment
 - 79 Part 15: Period rate on balance outstanding; weekly, monthly, four-weekly, quarterly and half-yearly periods.
- 10 Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, reg 10.

UPDATE

229-231 Calculation where a period rate is charged ... Calculation applicable to any agreement

Replaced. As to the calculation of the annual percentage rate of charge, see SI 1980/51 reg 7 (substituted by SI 1999/3177). SI 1980/51 regs 8-10 revoked and not replaced: SI 1999/3177.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/8. CHARGES FOR CREDIT/(2) CALCULATION/232. Computation of time.

232. Computation of time.

For the purposes of determining the length of any period in calculating the rate for the total charge for credit¹, a period which is not a whole number of calendar months or a whole number of weeks must be counted in years and days². A period which is a whole number of calendar months or a whole number of weeks must be counted in calendar months or in weeks, as the case may be³. However, where a period is both a whole number of calendar months and a whole number of weeks and (1) one repayment only is to be made, the period must be counted in calendar months⁴; or (2) more than one repayment is to be made (a) if all such repayments are to be made at intervals from the relevant date of one or more weeks, the period must be counted in weeks⁵; and (b) in any other case, the period must be counted in calendar months⁶.

A period which is to be counted (i) in calendar months, must be taken to be of a length equal to the relevant number of twelfth parts of a year⁷; and (ii) in weeks, must be taken to be of a length equal to the relevant number of fifty-second parts of a year⁸. A day must be taken to be one three hundred and sixty-fifth part of a year⁹, and every day must be taken to be a working day¹⁰.

- 1 As to the total charge for credit see para 225 ante. For the meaning of 'credit' see para 83 ante.
- 2 Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, reg 11(1), (2).
- 3 Ibid reg 11(3).
- 4 Ibid reg 11(4)(a).
- 5 Ibid reg 11(4)(b)(i).
- 6 Ibid reg 11(4)(b)(ii).
- 7 Ibid reg 11(5)(a).
- 8 Ibid reg 11(5)(b).
- 9 Ibid reg 11(6).
- 10 Ibid reg 11(7). For the meaning of 'working day' see para 120 note 5 ante.

UPDATE

232 Computation of time

TEXT AND NOTE 9--A day may be taken to be either (a) one three hundred and sixty-fifth part of a year or, if it is a leap year, one three hundred and sixty-sixth part of a year; or (b) 1/365.25 of a year: SI 1980/51 reg 11(6) (substituted by SI 1999/3177).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/8. CHARGES FOR CREDIT/(2) CALCULATION/233. Assumptions for calculations.

233. Assumptions for calculations.

The following assumptions¹ have effect (as the case may require) for the purpose of the calculation of the total charge for credit² and of the rate of such charge³ in relation to any actual or prospective agreement⁴, in respect of matters necessary for the calculation which cannot be ascertained by the creditor⁵ at the date of the making of the agreement⁶:

- 119 (1) where the amount of the credit to be provided under the agreement cannot be ascertained at the date of the making of the agreement (a) in the case of an agreement for running-account credit⁷ under which there is a credit limit, that amount must be taken to be such credit limit⁸; and (b) in any other case, that amount must be taken to be £100⁹;
- 120 (2) where the period for which credit is to be provided is not ascertainable at the date of the making of the agreement, it must be assumed that credit is provided for one year beginning with the relevant date¹⁰;
- 121 (3) where the rate or amount of any item included in the total charge for credit or the amount of any repayment of credit under a transaction¹¹ falls to be ascertained thereunder by reference to the level of any index or other factor in accordance with any formula specified therein, the rate or amount, as the case may be, must be taken to be the rate or amount so ascertained, the formula being applied as if the level of such index or other factor subsisting at the date of the making of the agreement were that subsisting at the date by reference to which the formula is to be applied¹²;
- 122 (4) where (a) the period for which the credit or any part thereof is to be or may be provided cannot be ascertained at the date of the making of the agreement¹³; and (b) the rate or amount of any item included in the total charge for credit will change at a time provided in the transaction within one year beginning with the relevant date¹⁴, the rate or amount must be taken to be the highest rate or amount at any time obtaining under the transaction in that year¹⁵;
- 123 (5) where the earliest date on which credit is to be provided cannot be ascertained at the date of the making of the agreement, it must be assumed that credit is provided on that date¹⁶;
- 124 (6) in the case of any transaction it must be assumed (a) that a charge payable at a time which cannot be ascertained at the date of the making of the agreement is payable on the relevant date or, where it may reasonably be expected that a debtor¹⁷ will not make payment on that date, on the earliest date at which it may reasonably be expected that he will make payment¹⁸; or (b) where more than one payment of a charge of the same description falls to be made at times which cannot be ascertained at the date of the making of the agreement, that the first such payment will be payable on the relevant date (or, where it may reasonably be expected that a debtor will not make payment on that date, at the earliest date on which it may reasonably be expected that he will make payment), that the last such payment will be payable at the end of the period for which credit is provided¹⁹ and that all other such payments (if any) will be payable at equal intervals between such times²⁰, as the case may require²¹.

¹ Ie those contained in the Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, Pt IV (regs 12-18).

- 2 Ie under ibid Pt II (regs 3-5): see paras 225-226 ante.
- 3 Ie under ibid Pt III (regs 6-11): see paras 228-232 ante.
- 4 For the meaning of 'agreement' see para 225 note 3 ante.
- 5 For the meaning of 'creditor' see para 81 note 2 ante.
- 6 Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, reg 12(1).
- 7 For the meaning of 'running-account credit' see para 84 ante.
- 8 Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, reg 13(a). For the meaning of 'credit limit' see para 84 note 6 ante.
- 9 Ibid reg 13(b). In a case where reg 13 and one or more other provisions of Pt IV would fall to be applied, reg 13 must be applied first: reg 12(2).
- 10 Ibid reg 14. For the meaning of the 'relevant date' see para 227 note 13 ante.
- 11 For the meaning of 'transaction' see para 225 note 6 ante.
- 12 Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, reg 15.
- 13 Ibid reg 16(a).
- 14 Ibid reg 16(b).
- 15 Ibid reg 16.
- 16 Ibid reg 17.
- 17 For the meaning of 'debtor' see para 81 note 3 ante.
- 18 Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, reg 18(a).
- 19 'The period for which credit is provided' means (1) in the case of an agreement under which the period for which credit is to be provided is ascertainable at the date of the making of the agreement, the period beginning with the relevant date and ending with the end of the period for which credit is to be provided; (2) in the case of an agreement under which the period for which credit is to be provided can be ascertained at the relevant date if the assumption set out in ibid reg 13 (see head (1) in the text) is applied, the period beginning with the relevant date and ending with the end of the period for which credit would be provided under the agreement if the amount given by that assumption were the amount of the credit so provided; and (3) in any other case, the period of one year referred to in reg 14 (see head (2) in the text): reg 1(3).
- 20 Ibid reg 18(b).
- 21 Ibid reg 18.

UPDATE

233 Assumptions for calculations

TEXT AND NOTE 12--SI 1980/51 reg 15 is now subject to reg 15A (inserted by SI 1999/3177): SI 1980/51 reg 15 (amended by SI 1999/3177).

Regulation 15A applies to any land-related agreement which provides for the possibility of any variation of the rate of interest if it is to be assumed, by virtue of SI 1980/51 reg 2(1)(e) (see PARA 227), that the variation will take place but the amount of the variation cannot be ascertained at the date of the making of the agreement: reg 15A(1). As to the definition of 'land-related agreement', see SI 1980/51 reg 1(2), and PARA 227 NOTE 9.

Where a land-related agreement provides a formula for calculating a varied rate by reference to a standard variable rate of interest applied by the creditor, or any other

fluctuating rate of interest, but does not enable the varied rate to be ascertained at the date of the making of the agreement because it is not known on that date what the standard variable rate will be or (as the case may be) at what level the fluctuating rate will be fixed when the varied rate falls to be calculated, it must be assumed that that rate or level will be the same as the initial standard variable rate: reg 15A(3). 'Initial standard variable rate' means the standard variable rate of interest which would be applied by the creditor to the agreement on the date of the making of the agreement if the agreement provided for interest to be paid at the creditor's standard variable rate with effect from that date, or if there is no such rate, the standard variable rate of interest applied by the creditor on the date of the making of the agreement in question to other land-related agreements or, where there is more than one such rate, the highest such rate, taking no account (for the avoidance of doubt) of any discount or other reduction to which the debtor would or might be entitled: reg 15A(2). 'Varied rate' means any rate of interest charged when a variation of the rate of interest is to be assumed to take place by virtue of reg 2(1)(e): reg 15A(2).

Where a land-related agreement provides for the possibility of any variation in the rate of interest (other than a variation referred to in reg 15A(3)) which it is to be assumed, by virtue of reg 2(1)(e), will take place but does not enable the amount of that variation to be ascertained at the date of the making of the agreement, it must be assumed that the varied rate will be the same as the initial standard variable rate: reg 15A(4).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/9. MATTERS ARISING DURING THE PERIOD OF THE AGREEMENT/(1) DUTY TO GIVE NOTICE/234. Duty to give notice before taking certain action in non-default cases.

9. MATTERS ARISING DURING THE PERIOD OF THE AGREEMENT

(1) DUTY TO GIVE NOTICE

234. Duty to give notice before taking certain action in non-default cases.

The creditor¹ or owner² is not entitled to enforce a term of a regulated agreement³ by (1) demanding earlier payment⁴ of any sum⁵; or (2) recovering possession of any goods⁶ or land⁷; or (3) treating any right conferred on the debtor⁸ or hirer⁹ by the agreement as terminated, restricted or deferred¹⁰, except by or after giving the debtor or hirer not less than seven days' notice¹¹ of intention to do so¹². This restriction applies only where (a) a period for the duration of the agreement is specified in the agreement¹³; and (b) that period has not ended when the creditor or owner does an act mentioned in heads (1) to (3) above¹⁴. The restriction does, however, apply notwithstanding that, under the agreement, any party is entitled to terminate it before the end of the period specified¹⁵.

The restriction does not apply to a right of enforcement arising by reason of any breach by the debtor or hirer of the regulated agreement¹⁶ and does not prevent a creditor from treating the right to draw on any credit¹⁷ as restricted or deferred and taking such steps as may be necessary to make the restriction or deferment effective¹⁸.

The restriction does not apply in the case of non-commercial agreements¹⁹ in relation to which no security²⁰ has been provided²¹.

- 1 For the meaning of 'creditor' see para 81 note 2 ante.
- 2 For the meaning of 'owner' see para 82 note 1 ante.
- 3 For the meaning of 'regulated agreement' see para 79 ante.
- 4 As to the meaning of 'payment' see para 84 note 5 ante.
- 5 Consumer Credit Act 1974 s 76(1)(a).
- 6 For the meaning of 'goods' see para 82 note 5 ante.
- 7 Consumer Credit Act 1974 s 76(1)(b). For the meaning of 'land' see para 93 note 2 ante.
- 8 For the meaning of 'debtor' see para 81 note 3 ante.
- 9 For the meaning of 'hirer' see para 82 note 3 ante.
- 10 Consumer Credit Act 1974 s 76(1)(c).
- 11 For the meaning of 'notice' see para 128 note 3 ante. As to the contents of the notice see para 235 post.
- 12 Consumer Credit Act 1974 s 76(1). Similarly, the creditor or owner is not entitled to terminate a regulated agreement except by or after giving the debtor or hirer not less than seven days' notice of the termination: see s 98; and para 262 post. If the creditor or owner wishes to take any of the steps in heads (1)-(3) in the text in addition to terminating the agreement, the required notices may be combined in a single document: see the Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983, SI 1983/1561, reg 2(8); and para 235 post. As to the giving of notice in default cases see paras 263-264 post.

Regulations may provide that the Consumer Credit Act 1974 s 76(1) is not to apply to agreements described by the regulations: s 76(5). As to the regulations made see the text and note 21 infra.

A notice under s 76(1) is ineffective if not in the prescribed form: s 76(3). For the meaning of 'prescribed' see para 114 note 8 ante. As to the form of the notice that has been prescribed see para 235 post.

- 13 Ibid s 76(2)(a).
- 14 Ibid s 76(2)(b).
- 15 Ibid s 76(2).
- 16 Ibid s 76(6). As to the provisions relating to default cases see para 263 et seq post.
- 17 For the meaning of 'credit' see para 83 ante.
- 18 Consumer Credit Act 1974 s 76(4).
- 19 For the meaning of 'non-commercial agreement' see para 107 ante.
- 20 For the meaning of 'security' see para 200 note 1 ante.
- 21 See the Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983, SI 1983/1561, reg 2(9). As to the power to make these regulations see the Consumer Credit Act 1974 s 76(5); and note 12 supra.

UPDATE

234-250 Matters Arising During the Period of the Agreement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/9. MATTERS ARISING DURING THE PERIOD OF THE AGREEMENT/(1) DUTY TO GIVE NOTICE/235. Contents of notice.

235. Contents of notice.

Any notice¹ required to be given by a creditor² or owner³ in relation to a regulated agreement⁴ to a debtor⁵ or hirer⁶ before taking certain action to enforce a term of an agreement⁷ must contain certain prescribed information⁸. The lettering in any notice given under the above provision must, apart from any signature, be easily legible and of a colour which is readily distinguishable from the colour of the paper⁹.

- 1 For the meaning of 'notice' see para 128 note 3 ante.
- 2 For the meaning of 'creditor' see para 81 note 2 ante.
- 3 For the meaning of 'owner' see para 82 note 1 ante.
- 4 For the meaning of 'regulated agreement' see para 79 ante.
- 5 For the meaning of 'debtor' see para 81 note 3 ante.
- 6 For the meaning of 'hirer' see para 82 note 3 ante.

7 Ie under the Consumer Credit Act 1974 s 76(1) (see para 234 ante). Where a notice is to be given under s 76(1) and s 98(1) (see para 262) in relation to a regulated agreement, one notice may be given under those two provisions reproducing the combined effect of the Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983, SI 1983/1561, Schs 1, 3 (see note 8 infra; and para 262 post): reg 2(8).

8 Ibid reg 2(1). The prescribed information is as follows: (1) a statement that the notice is served under the Consumer Credit Act 1974 s 76(1); (2) the information set out in the Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983, SI 1983/1561, Sch 1 paras 1-5; and (3) statements in the form specified in Sch 1 paras 6-8: reg 2(1).

Where any statement is required to be in a specified form and is reproduced in the notice, then apart from any heading to the notice, trade names or names of parties to the agreement (a) the lettering in the statement must be afforded more prominence (whether by capital letters, underlining, large or bold print or otherwise) than any other lettering in the notice; and (b) where words are both shown in capital letters and underlined in any specified statement, they must be afforded yet more prominence: reg 2(5).

The wording in any such statement must be reproduced in the notice without any alteration or addition, and in relation to any statement to be contained in the notice the requirements of any note must be complied with, except that the words 'the creditor' may be replaced by the name of the creditor, by the expression by which he is referred to in the agreement or by an appropriate pronoun, and any consequential changes to pronouns and verbs may be used: reg 2(6). Where any note requires any words to be omitted, those words must be omitted or deleted: reg 2(7).

- 9 Ibid reg 2(4).

UPDATE

234-250 Matters Arising During the Period of the Agreement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

235 Contents of notice

TEXT AND NOTES--Any notice to be given under a provision of SI 1983/1561 must be in writing and given to the debtor or hirer in paper form: reg 2(4A) (added by SI 2004/3237).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/9. MATTERS ARISING DURING THE PERIOD OF THE AGREEMENT/(2) DUTY TO GIVE INFORMATION/236. Duty on request to give information to debtor under fixed-sum credit agreement.

(2) DUTY TO GIVE INFORMATION

236. Duty on request to give information to debtor under fixed-sum credit agreement.

The creditor¹ under a regulated agreement² for fixed-sum credit³, within the period of 12 working days⁴ after receiving a request in writing to that effect from the debtor⁵ and payment of a fee of £1, must give the debtor a copy⁶ of the executed agreement⁷ (if any) and of any other document referred to in it, together with a statement signed by or on behalf of the creditor showing, according to the information to which it is practicable for him to refer⁸, (1) the total sum paid under the agreement by the debtor⁹; (2) the total sum which has become payable under the agreement by the debtor but remains unpaid, and the various amounts comprised in that total sum, with the date when each became due¹⁰; and (3) the total sum which is to become payable under the agreement by the debtor, and the various amounts comprised in that total sum, with the date, or mode of determining the date, when each becomes due¹¹.

The duty does not apply to (a) an agreement under which no sum is, or will or may become, payable by the debtor¹²; or (b) a request made less than one month after a previous request under that provision relating to the same agreement was complied with¹³. If the creditor under an agreement fails to comply with the provision he is not entitled, while the default continues, to enforce the agreement¹⁴, and if the default continues for one month he commits an offence¹⁵.

The duty does not apply to a non-commercial agreement¹⁶.

1 For the meaning of 'creditor' see para 81 note 2 ante.

2 For the meaning of 'regulated agreement' see para 79 ante.

3 For the meaning of 'fixed-sum credit' see para 85 ante.

4 Consumer Credit (Prescribed Periods for Giving Information) Regulations 1983, SI 1983/1569, reg 2, Schedule. For the meaning of 'working day' see para 120 note 5 ante.

5 For the meaning of 'debtor' see para 81 note 3 ante.

6 As to the meaning of 'copy' see para 174 text and note 4 ante.

7 For the meaning of 'executed agreement' see para 115 note 3 ante.

8 Consumer Credit Act 1974 s 77(1) (amended by the Consumer Credit (Further Increase of Monetary Amounts) Order 1998, SI 1998/997, art 3, Schedule).

A statement made by a creditor under the Consumer Credit Act 1974 s 77(1) (as so amended) is binding on him: see s 172(1), (3); and para 303 post.

9 Ibid s 77(1)(a).

10 Ibid s 77(1)(b).

11 Ibid s 77(1)(c). If the creditor possesses insufficient information to enable him to ascertain the amounts and dates mentioned in head (3) of the text, he is taken to comply with the requirement in that head if his statement gives the basis on which, under the regulated agreement, they would fall to be ascertained: s 77(2).

12 Ibid s 77(3)(a).

13 Ibid s 77(3)(b).

14 Ibid s 77(4)(a).

15 Ibid s 77(4)(b). The offence is punishable on summary conviction by a fine not exceeding level 4 on the standard scale: s 167(1), Sch 1 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see para 202 note 19 ante.

16 Consumer Credit Act 1974 s 77(5). For the meaning of 'non-commercial agreement' see para 107 ante.

UPDATE

234-250 Matters Arising During the Period of the Agreement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

236 Duty on request to give information to debtor under fixed-sum credit agreement

TEXT AND NOTES--For statements to be provided in relation to fixed-sum credit agreements see Consumer Credit Act 1974 s 77A (added by Consumer Credit Act 2006 s 6; and amended by SI 2008/2826); Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007, SI 2007/1167 (see PARA 263-268).

TEXT AND NOTE 14--As to the interpretation of s 77(4)(a) see *McGuffick v Royal Bank of Scotland plc*[2009] EWHC 2386 (Comm), [2009] All ER (D) 72 (Oct).

TEXT AND NOTE 15--Consumer Credit Act 1974 s 77(4)(b) repealed: SI 2008/1277.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/9. MATTERS ARISING DURING THE PERIOD OF THE AGREEMENT/(2) DUTY TO GIVE INFORMATION/237. Duty on request to give information to debtor under running-account credit agreement.

237. Duty on request to give information to debtor under running-account credit agreement.

The creditor¹ under a regulated agreement² for running-account credit³, within the period of 12 working days⁴ after receiving a request in writing to that effect from the debtor⁵ and payment of a fee of £1, must give the debtor a copy⁶ of the executed agreement⁷ (if any) and of any other document referred to in it, together with a statement signed by or on behalf of the creditor showing, according to the information to which it is practicable for him to refer⁸, (1) the state of the account⁹; and (2) the amount, if any, currently payable under the agreement by the debtor to the creditor¹⁰; and (3) the amounts and due dates of any payments which, if the debtor does not draw further on the account, will later become payable under the agreement by the debtor to the creditor¹¹.

The duty does not apply to (a) an agreement under which no sum is, or will or may become, payable by the debtor¹²; or (b) a request made less than one month after a previous request under that provision relating to the same agreement was complied with¹³.

If the creditor under an agreement fails to comply with the duty to give information, he is not entitled, while the default continues, to enforce the agreement¹⁴, and if the default continues for one month he commits an offence¹⁵.

The duty does not apply to a non-commercial agreement¹⁶.

1 For the meaning of 'creditor' see para 81 note 2 ante.

2 For the meaning of 'regulated agreement' see para 79 ante.

3 For the meaning of 'running-account credit' see para 84 ante.

4 Consumer Credit (Prescribed Periods for Giving Information) Regulations 1983, SI 1983/1569, reg 2, Schedule. For the meaning of 'working day' see para 120 note 5 ante.

5 For the meaning of 'debtor' see para 81 note 3 ante.

6 As to the meaning of 'copy' see para 174 text and note 4 ante.

7 For the meaning of 'executed agreement' see para 115 note 3 ante.

8 Consumer Credit Act 1974 s 78(1) (amended by the Consumer Credit (Further Increase of Monetary Amounts) Order 1998, SI 1998/997, art 3, Schedule).

A statement made by a creditor under the Consumer Credit Act 1974 s 78(1) (as amended) is binding on him: see s 172(1), (3); and para 303 post.

9 Ibid s 78(1)(a).

10 Ibid s 78(1)(b).

11 Ibid s 78(1)(c). If the creditor possesses insufficient information to enable him to ascertain the amounts and dates mentioned in head (3) of the text, he is taken to comply with the requirement in that head if his statement gives the basis on which, under the regulated agreement, they would fall to be ascertained: s 78(2).

12 Ibid s 78(3)(a).

13 Ibid s 78(3)(b).

14 Ibid s 78(6)(a).

15 Ibid s 78(6)(b). An offence under s 78(6) is punishable on summary conviction by a fine not exceeding level 4 on the standard scale: s 167(1), Sch 1 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see para 202 note 19 ante.

16 Consumer Credit Act 1974 s 78(7). For the meaning of 'non-commercial agreement' see para 107 ante.

UPDATE

234-250 Matters Arising During the Period of the Agreement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

237 Duty on request to give information to debtor under running-account credit agreement

NOTES 5-15--Guidance has been given in matters concerning requests for copies of credit card agreements and consequences of non-compliance: *Carey v HSBC Bank plc* [2009] EWHC 3417 (QB), [2010] All ER (D) 05 (Feb).

TEXT AND NOTE 15--Consumer Credit Act 1974 s 78(6)(b) repealed: SI 2008/1277.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/9. MATTERS ARISING DURING THE PERIOD OF THE AGREEMENT/(2) DUTY TO GIVE INFORMATION/238. Duty automatically to give periodic information to debtor under running-account credit agreement.

238. Duty automatically to give periodic information to debtor under running-account credit agreement.

Where running-account credit¹ is provided under a regulated agreement², the creditor³ must give the debtor⁴ statements in the prescribed⁵ form and with the prescribed contents⁶ (1) showing according to the information to which it is practicable for him to refer, the state of the account at regular intervals of not more than 12 months⁷; and (2) where the agreement provides, in relation to specified periods, for the making of payments by the debtor, or the charging against him of interest or any other sum, showing according to the information to which it is practicable for him to refer the state of the account at the end of each of those periods during which there is any movement in the account⁸. A statement must be given within the prescribed period⁹ after the end of the period to which the statement relates¹⁰.

These provisions do not apply to a non-commercial agreement¹¹ or to a small agreement¹².

- 1 For the meaning of 'running-account credit' see para 84 ante.
- 2 For the meaning of 'regulated agreement' see para 79 ante.
- 3 For the meaning of 'creditor' see para 81 note 2 ante.
- 4 For the meaning of 'debtor' see para 81 note 3 ante.
- 5 For the meaning of 'prescribed' see para 114 note 8 ante.
- 6 As to the prescribed form and contents see para 239 post.
- 7 Consumer Credit Act 1974 s 78(4)(a).
- 8 Ibid s 78(4)(b).
- 9 As to the prescribed period see para 239 post.
- 10 Consumer Credit Act 1974 s 78(5).
- 11 For the meaning of 'non-commercial agreement' see para 107 ante.
- 12 Consumer Credit Act 1974 s 78(7). For the meaning of 'small agreement' see para 108 ante.

UPDATE

234-250 Matters Arising During the Period of the Agreement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

238 Duty automatically to give periodic information to debtor under running-account credit agreement

TEXT AND NOTES 1-8--Regulations may require a statement under the Consumer Credit Act 1974 s 78(4) to contain also information in the prescribed terms about the consequences of the debtor failing to make payments as required by the agreement, or only making payments of a prescribed description in prescribed circumstances: s 78(4A) (added by Consumer Credit Act 2006 s 7(1)). See further Sch 3 para 3. For regulations made under 1974 Act s 78(4A) see Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007, SI 2007/1167; and PARA 263-268.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/9. MATTERS ARISING DURING THE PERIOD OF THE AGREEMENT/(2) DUTY TO GIVE INFORMATION/239. Form and content of automatic periodic statements in relation to running-account credit agreements.

239. Form and content of automatic periodic statements in relation to running-account credit agreements.

Any periodic statement to be given automatically¹ by a creditor² under a regulated agreement³ to a debtor⁴ must be in writing with the prescribed contents⁵. The lettering⁶ in any part of any such statement must, apart from any signature, be easily legible and of a colour which is readily distinguishable from the colour of the paper⁷. Every such statement must relate to a period starting from the end of the period to which the last previous statement⁸ relates⁹. The first such statement must relate to a period starting on or before the date of the first movement in the account¹⁰.

The period after the end of the period to which the statement relates within which the creditor must give statements to the debtor¹¹ is one month, where the statement includes a demand for payment¹² of any amount payable under the agreement by the debtor to the creditor¹³. Where the statement does not include any such demand and indicates that there is no debit or credit balance standing on the account under the agreement at the end of the period to which the statement relates, the prescribed period¹⁴ is (1) 12 months from the date of the end of the period to which the statement relates; or (2) where there has been no debit or credit balance standing on the account at any time during the period to which the statement relates, 12 months after the date on which there is first a debit or a credit balance on the account following the end of the period to which the statement relates¹⁵. In any other case the prescribed period¹⁶ is six months¹⁷. Special provision is made for agreements made prior to 19 May 1985¹⁸.

1 Le a statement under the Consumer Credit Act 1974 s 78(4): see para 238 ante.

2 For the meaning of 'creditor' see para 81 note 2 ante.

3 For the meaning of 'regulated' see para 79 ante.

4 For the meaning of 'debtor' see para 81 note 3 ante.

5 Consumer Credit (Running-Account Credit Information) Regulations 1983, SI 1983/1570, reg 2(1), Schedule. The prescribed contents are (1) any opening balance standing on the account at the beginning of the period to which the statement relates and the balance at the end of that period; (2) the date of any movement in the account shown on the statement during the period to which the statement relates and the date of the end of that period; (3) the amount of any payment made into the account by, or to the credit of, the debtor during the period to which the statement relates; (4) the amount of any drawing on the account by the debtor during the period to which the statement relates, with sufficient information to enable the debtor to identify the drawing; (5) the amount of any interest or other charges payable by the debtor and applied to the account during the period to which the statement relates, whether or not the interest or other charges relate only to the said period; and (6) where the statement shows that interest has been applied to the account during the period to which the statement relates (a) sufficient information to enable the debtor to check the calculation of the amount of the interest so applied; or (b) the rate of interest which has been used to calculate the amount of the interest so applied or, if the rate was varied, each rate of interest which has been so used and the time during which each rate applied; or (c) a statement that the rate, or each rate, of interest which has been used to calculate the amount of the interest so applied will be provided by the creditor on request, together with a clear explanation of the manner in which the amount of the interest so applied has been calculated: reg 2(1), Schedule.

Where any of the above information has been contained in a statement complying with the Consumer Credit Act 1974 s 78(4)(b) (see para 238 ante) in relation to any period, nothing in the Consumer Credit (Running-Account Credit Information) Regulations 1983, SI 1983/1570, reg 2 requires that information to be contained in

relation to that period in any subsequent statement complying with the Consumer Credit Act 1974 s 78(4): Consumer Credit (Running-Account Credit Information) Regulations 1983, SI 1983/1570, reg 2(5).

- 6 'Lettering' includes figures and symbols: ibid reg 1(2).
- 7 Ibid reg 2(2).
- 8 In the last previous statement complying with the Consumer Credit Act 1974 s 78(4) (see para 238 ante).
- 9 Consumer Credit (Running-Account Credit Information) Regulations 1983, SI 1983/1570, reg 2(3). Regulation 2(3) is subject to regs 2(4), 4 (see the text and notes 10, 18 infra): reg 2(3).
- 10 Ibid reg 2(4).
- 11 In under the Consumer Credit Act 1974 s 78(5): see para 238 ante.
- 12 As to the meaning of 'payment' see para 84 note 5 ante.
- 13 Consumer Credit (Running-Account Credit Information) Regulations 1983, SI 1983/1570, reg 3(1).
- 14 In for the purposes of the Consumer Credit Act 1974 s 78(5) (see para 238 ante).
- 15 Consumer Credit (Running-Account Credit Information) Regulations 1983, SI 1983/1570, reg 3(2).
- 16 In for the purposes of the Consumer Credit Act 1974 s 78(5) (see para 238 ante).
- 17 Consumer Credit (Running-Account Credit Information) Regulations 1983, SI 1983/1570, reg 3(3).
- 18 See ibid reg 4.

UPDATE

234-250 Matters Arising During the Period of the Agreement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

239 Form and content of automatic periodic statements in relation to running-account credit agreements

TEXT AND NOTES 6, 7--SI 1983/1570 reg 2(2) amended: SI 2004/3262.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/9. MATTERS ARISING DURING THE PERIOD OF THE AGREEMENT/(2) DUTY TO GIVE INFORMATION/240. Duty on request to give hirer information.

240. Duty on request to give hirer information.

The owner¹ under a regulated consumer hire agreement², within the period of 12 working days³ after receiving a request in writing to that effect from the hirer⁴ and payment of a fee of £1, must give to the hirer a copy⁵ of the executed agreement⁶ and of any other document referred to in it, together with a statement signed by or on behalf of the owner showing, according to the information to which it is practicable for him to refer, the total sum which has become payable under the agreement by the hirer but remains unpaid and the various amounts comprised in that total sum, with the date when each became due⁷.

The duty does not apply to (1) an agreement under which no sum is, or will or may become, payable by the hirer⁸; or (2) a request made less than one month after a previous request under that provision relating to the same agreement was complied with⁹. If the owner under an agreement fails to comply with the duty he is not entitled, while the default continues, to enforce the agreement¹⁰; and if the default continues for one month he commits an offence¹¹.

The duty does not apply to a non-commercial agreement¹².

1 For the meaning of 'owner' see para 82 note 1 ante.

2 For the meaning of 'regulated' see para 79 ante; and for the meaning of 'consumer hire agreement' see para 82 ante.

3 Consumer Credit (Prescribed Periods for Giving Information) Regulations 1983, SI 1983/1569, reg 2, Schedule. For the meaning of 'working day' see para 120 note 5 ante.

4 For the meaning of 'hirer' see para 82 note 3 ante.

5 As to the meaning of 'copy' see para 174 text and note 4 ante.

6 For the meaning of 'executed agreement' see para 115 note 3 ante.

7 Consumer Credit Act 1974 s 79(1) (amended by the Consumer Credit (Further Increase of Monetary Amounts) Order 1998, SI 1998/997, art 3, Schedule).

A statement made by an owner under the Consumer Credit Act 1974 s 79(1) (as so amended) is binding on him: see s 172(1), (3); and para 303 post.

8 Ibid s 79(2)(a).

9 Ibid s 79(2)(b).

10 Ibid s 79(3)(a).

11 Ibid s 79(3)(b). An offence under s 79(3) is punishable on summary conviction by a fine not exceeding level 4 on the standard scale: s 167(1), Sch 1 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see para 202 note 19 ante.

12 Consumer Credit Act 1974 s 79(4). For the meaning of 'non-commercial agreement' see para 107 ante.

UPDATE

234-250 Matters Arising During the Period of the Agreement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

240 Duty on request to give hirer information

TEXT AND NOTE 11--Consumer Credit Act 1974 s 79(3)(b) repealed: SI 2008/1277.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/9. MATTERS ARISING DURING THE PERIOD OF THE AGREEMENT/(2) DUTY TO GIVE INFORMATION/241. Debtor or hirer on request to give information about goods.

241. Debtor or hirer on request to give information about goods.

Where a regulated agreement¹, other than a non-commercial agreement², requires the debtor³ or hirer⁴ to keep goods⁵ to which the agreement relates in his possession or control, he must, within seven working days⁶ after he has received a request in writing to that effect from the creditor⁷ or owner⁸, tell the creditor or owner where the goods are⁹. If the debtor or hirer fails to comply with this requirement, and the default continues for 14 days, he commits an offence¹⁰.

- 1 For the meaning of 'regulated agreement' see para 79 ante.
- 2 For the meaning of 'non-commercial agreement' see para 107 ante.
- 3 For the meaning of 'debtor' see para 81 note 3 ante.
- 4 For the meaning of 'hirer' see para 82 note 3 ante.
- 5 For the meaning of 'goods' see para 82 note 5 ante.
- 6 For the meaning of 'working day' see para 120 note 5 ante.
- 7 For the meaning of 'creditor' see para 81 note 2 ante.
- 8 For the meaning of 'owner' see para 82 note 1 ante.
- 9 Consumer Credit Act 1974 s 80(1).

10 Ibid s 80(2). The offence is punishable on summary conviction by a fine not exceeding level 3 on the standard scale: s 167(1), Sch 1 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see para 202 note 19 ante.

UPDATE

234-250 Matters Arising During the Period of the Agreement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/9. MATTERS ARISING DURING THE PERIOD OF THE AGREEMENT/(3) APPROPRIATION OF PAYMENTS/242.
Appropriation of payments.

(3) APPROPRIATION OF PAYMENTS

242. Appropriation of payments.

Where a debtor¹ or hirer² is liable to make to the same person payments in respect of two or more regulated agreements³, he is entitled, on making any payment⁴ in respect of the agreements which is not sufficient to discharge the total amount then due under all the agreements, to appropriate the sum so paid by him (1) in or towards the satisfaction of the sum due under any one of the agreements⁵; or (2) in or towards the satisfaction of the sums due under any two or more of the agreements in such proportions as he thinks fit⁶.

If the debtor or hirer fails to make any such appropriation where one or more of the agreements is (a) a hire-purchase agreement⁷ or conditional sale agreement⁸; or (b) a consumer hire agreement⁹; or (c) an agreement in relation to which any security¹⁰ is provided¹¹, the payment must be appropriated towards the satisfaction of the sums due under the several agreements respectively in the proportions which those sums bear to one another¹².

- 1 For the meaning of 'debtor' see para 81 note 3 ante.
- 2 For the meaning of 'hirer' see para 82 note 3 ante.
- 3 For the meaning of 'regulated agreement' see para 79 ante.
- 4 As to the meaning of 'payment' see para 84 note 5 ante.
- 5 Consumer Credit Act 1974 s 81(1)(a).
- 6 Ibid s 81(1)(b).
- 7 For the meaning of 'hire-purchase agreement' see para 95 ante.
- 8 Consumer Credit Act 1974 s 81(2)(a). For the meaning of 'conditional sale agreement' see para 93 ante.
- 9 Ibid s 81(2)(b). For the meaning of 'consumer hire agreement' see para 82 ante.
- 10 For the meaning of 'security' see para 200 note 1 ante.
- 11 Consumer Credit Act 1974 s 81(2)(c).
- 12 Ibid s 81(2).

UPDATE

234-250 Matters Arising During the Period of the Agreement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/9. MATTERS ARISING DURING THE PERIOD OF THE AGREEMENT/(4) VARIATION OF AGREEMENTS/(i) Unilateral Variation/243. Variation of agreements.

(4) VARIATION OF AGREEMENTS

(i) Unilateral Variation

243. Variation of agreements.

Where, under a power contained in a regulated agreement¹, the creditor² or owner³ varies the agreement, the variation does not take effect before notice⁴ of it is given to the debtor⁵ or hirer⁶ in the prescribed manner⁷.

This provision does not apply to a non-commercial agreement⁸.

Where an agreement has been varied in accordance with this provision, every copy of the executed agreement⁹ given to a debtor, hirer or surety¹⁰ must include either (1) an easily legible copy of the latest notice of variation given in accordance with this provision relating to each discrete term of the agreement which has been varied; or (2) an easily legible statement of the terms of the agreement as varied in accordance with this provision¹¹.

1 For the meaning of 'regulated agreement' see para 79 ante.

2 For the meaning of 'creditor' see para 81 note 2 ante.

3 For the meaning of 'owner' see para 82 note 1 ante.

4 For the meaning of 'notice' see para 128 note 3 ante.

5 For the meaning of 'debtor' see para 81 note 3 ante.

6 For the meaning of 'hirer' see para 82 note 3 ante.

7 Consumer Credit Act 1974 s 82(1). There is no sanction for a failure to serve notice in the prescribed manner other than that the variation will not take effect: see s 170; and para 301 post. For the meaning of 'prescribed' see para 114 note 8 ante.

As to the prescribed manner see the Consumer Credit (Notice of Variation of Agreements) Regulations 1977, SI 1977/328 (which came into operation on 1 April 1977: see reg 1(1)); and para 244 post. The Interpretation Act 1979 applies for the interpretation of the Consumer Credit (Notice of Variation of Agreements) Regulations 1977, SI 1977/328, as it applies for the interpretation of an Act of Parliament: see the Interpretation Act 1978 s 25(2); and the Consumer Credit (Notice of Variation of Agreements) Regulations 1977, SI 1977/328, reg 1(4).

As to rights of variation see *Lombard Tricity Finance Ltd v Paton*[1989] 1 All ER 918 [1989] CCLR 21, CA. See also the Unfair Terms in Consumer Contracts Regulations 1994, SI 1994/3159; and CONTRACT vol 9(1) (Reissue) para 790 et seq post.

8 Consumer Credit Act 1974 s 82(7). For the meaning of 'non-commercial agreement' see para 107 ante.

9 For the meaning of 'executed agreement' see para 115 note 3 ante.

10 Ie under any provision of the Consumer Credit Act 1974 other than that relating to the issue of new credit-tokens (see s 85(1); and para 248 post). For the meaning of 'surety' see para 200 note 6 ante.

11 Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557, reg 7(1).

UPDATE

234-250 Matters Arising During the Period of the Agreement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

243 Variation of agreements

NOTE 8--SI 1994/3159 now Unfair Terms in Consumer Contracts Regulations 1999, SI 1999/2083.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/9. MATTERS ARISING DURING THE PERIOD OF THE AGREEMENT/(4) VARIATION OF AGREEMENTS/(i) Unilateral Variation/244. Notice of variation of agreements.

244. Notice of variation of agreements.

Notice of variation¹ of any regulated agreement must (1) set out particulars of the variation²; and (2) be served on the debtor or hirer not less than seven days before the variation takes effect³.

In the case of certain variations relating to a consumer credit agreement⁴, the requirements of head (2) above are treated as satisfied where:

- 125 (a) the notice of variation (i) is published in at least three national daily newspapers⁵; or (ii) if it is not reasonably practicable so to publish it, is published in the Gazette⁶; and
- 126 (b) if it is reasonably practicable to do so, the notice of variation is prominently displayed, so that it may be easily read, in a part, if any, open to the public of the premises of the creditor where the agreement to which the variation relates is maintained⁷.

In the case of certain variations relating to a consumer hire agreement⁸, the requirements of head (2) above are treated as satisfied where, before the variation takes effect (A) the notice of variation is served on the hirer; or (B) the notice of variation is prominently displayed so that it may easily be read in the part of the premises of the owner where the hirer or a person on his behalf ordinarily makes payments under the agreement in person⁹.

1 References in the Consumer Credit (Notice of Variation of Agreements) Regulations 1977, SI 1977/328, to notice of variation are references to such notice of variation of a regulated agreement as is by virtue of the Consumer Credit Act 1974 s 82(1) (see para 243 ante) required to be given to the debtor or hirer before the variation can take effect: Consumer Credit (Notice of Variation of Agreements) Regulations 1977, SI 1977/328, reg 1(5). For the meaning of 'regulated agreement' see para 79 ante. For the meaning of 'debtor' see para 81 note 3 ante; and for the meaning of 'hirer' see para 82 note 3 ante.

2 Ibid reg 2(a).

3 Ibid reg 2(b). 'Served' means dealt with in such a manner that the thing served falls to be treated as properly served under the Consumer Credit Act 1974 s 176(1) (see para 314 post): Consumer Credit (Notice of Variation of Agreements) Regulations 1977, SI 1977/328, reg 1(2).

4 If a variation of a regulated consumer credit agreement where (1) the amount of the payments of interest charged under the agreement is determined, both before and after the variation takes effect, by reference to the amount of the balance outstanding, established as at daily intervals; and (2) the variation is a variation of the rate of interest payable under the agreement: *ibid* reg 3(1). For the meaning of 'consumer credit agreement' see para 81 ante (definition applied by reg 1(2)). For the meaning of 'regulated' see para 79 ante (definition applied by reg 1(2)).

5 Ibid reg 3(2)(a)(i). The notice of variation must be printed in a type not less than 3 mm in height and occupy a space of not less than 100 sq cm: see reg 3(2)(a)(i). 'National daily newspaper' means a newspaper which (1) is normally published daily, or daily except on any Sunday, Christmas Day, Good Friday or bank holiday within the meaning of the Banking and Financial Dealings Act 1971 (see *TIME* vol 97 (2010) PARA 321); and (2) circulates generally throughout England, Scotland, Wales and Northern Ireland or throughout each of those countries in which the creditor making the variation in question maintains a place of business: Consumer Credit (Notice of Variation of Agreements) Regulations 1977, SI 1977/328, reg 1(2).

6 Ibid reg 3(2)(a)(ii). 'The Gazette' means the appropriate gazette (that is to say, in relation to a variation made by a creditor who maintains a place of business in (1) England or Wales, the London Gazette; (2) Northern

Ireland, the Belfast Gazette); and, in relation to a variation made by a creditor who maintains a place of business in more than one of those countries, each appropriate gazette: reg 1(2).

7 Ibid reg 3(2)(b). For these purposes, an agreement is to be treated as maintained on those premises where the debtor habitually approaches the creditor, or would so approach him if the need arose, in order to secure that transactions are carried out or arrangements are made under the agreement: reg 1(3).

8 If a variation of a regulated consumer hire agreement where the variation is a variation of the amount of any sum payable under the agreement and (1) is of no greater amount than any increase in the amount of VAT chargeable on the supply to which the payment relates; or (2) is of the amount of any decrease in that amount of VAT: ibid reg 4(1) (added by SI 1979/661; amended by SI 1979/667). For the meaning of 'consumer hire agreement' see para 82 ante (definition applied by the Consumer Credit (Notice of Variation of Agreements) Regulations 1977, SI 1977/328, reg 1(2)).

9 Consumer Credit (Notice of Variation of Agreements) Regulations 1977, SI 1977/328, reg 4(2) (added by SI 1979/661; amended by SI 1979/667).

UPDATE

234-250 Matters Arising During the Period of the Agreement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/9. MATTERS ARISING DURING THE PERIOD OF THE AGREEMENT/(4) VARIATION OF AGREEMENTS/(ii) Variation by Consent and Modifying Agreements/245. Modifying agreements.

(ii) Variation by Consent and Modifying Agreements

245. Modifying agreements.

In addition to unilateral variation of a regulated agreement¹ by a creditor² or owner³, an agreement may be varied or supplemented by a modifying agreement⁴.

Modifying agreements, and the requirements as to the form and content of such agreements, are dealt with elsewhere in this title⁵.

- 1 For the meaning of 'regulated agreement' see para 79 ante.
- 2 For the meaning of 'creditor' see para 81 note 2 ante.
- 3 For the meaning of 'owner' see para 82 note 1 ante.
- 4 As to the meaning of 'modifying agreement' see para 191 ante.
- 5 See paras 191-195 ante.

UPDATE

234-250 Matters Arising During the Period of the Agreement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/9. MATTERS ARISING DURING THE PERIOD OF THE AGREEMENT/(5) MISUSE OF CREDIT FACILITIES AND CREDIT-TOKENS/246. Liability for misuse of credit facilities.

(5) MISUSE OF CREDIT FACILITIES AND CREDIT-TOKENS

246. Liability for misuse of credit facilities.

The debtor¹ under a regulated consumer credit agreement² is not liable to the creditor³ for any loss arising from use of the credit facility by another person not acting, or to be treated as acting, as the debtor's agent⁴.

1 For the meaning of 'debtor' see para 81 note 3 ante.

2 For the meaning of 'regulated' see para 79 ante; and for the meaning of 'consumer credit agreement' see para 81 ante.

3 For the meaning of 'creditor' see para 81 note 2 ante.

4 Consumer Credit Act 1974 s 83(1). Section 83(1) does not apply to a non-commercial agreement, or to any loss in so far as it arises from misuse of an instrument to which the Cheques Act 1957 s 4 (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 882) applies: Consumer Credit Act 1974 s 83(2). For the meaning of 'non-commercial agreement' see para 107 ante. As to agents see paras 176-178 ante; and AGENCY vol 1 (2008) PARA 1.

UPDATE

234-250 Matters Arising During the Period of the Agreement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/9. MATTERS ARISING DURING THE PERIOD OF THE AGREEMENT/(5) MISUSE OF CREDIT FACILITIES AND CREDIT-TOKENS/247. Misuse of credit-tokens.

247. Misuse of credit-tokens.

The provisions as to liability for misuse of credit facilities¹ do not prevent the debtor² under a credit-token agreement³ from being made liable to the extent of £50 (or the credit limit⁴ if lower) for loss to the creditor⁵ arising from use of the credit-token⁶ by other persons during a period beginning when the credit-token ceases to be in the possession of any authorised person⁷ and ending when the credit-token is once more in the possession of an authorised person⁸. However, the provision as to liability for misuse of credit facilities does not prevent the debtor under a credit-token agreement from being made liable to any extent for loss to the creditor from use of the credit-token by a person who acquired possession of it with the debtor's consent⁹.

The above provisions do not apply (1) to any use of the credit-token after the creditor has been given oral or written notice¹⁰ that it is lost or stolen, or is for any other reason liable to misuse; and (2) unless there are contained in the credit-token agreement in the prescribed manner¹¹ particulars of the name, address and telephone number of a person stated to be the person to whom notice is to be given under head (1) above¹². Any sum paid by the debtor for the issue of the credit-token, to the extent (if any) that it has not been previously offset by use made of the credit-token, is treated as paid towards satisfaction of any liability under the above provisions¹³.

Where two or more credit-tokens are given under one credit-token agreement, these provisions apply to each credit-token separately¹⁴.

1 Ie the Consumer Credit Act 1974 s 83: see para 246 ante.

2 For the meaning of 'debtor' see para 81 note 3 ante.

3 For the meaning of 'credit-token agreement' see para 88 ante.

4 For the meaning of 'credit limit' see para 84 note 6 ante.

5 For the meaning of 'creditor' see para 81 note 2 ante.

6 For the meaning of 'credit-token' see para 88 ante.

7 The debtor, the creditor, and any person authorised by the debtor to use the credit-token, are authorised persons for these purposes: Consumer Credit Act 1974 s 84(7).

8 Ibid s 84(1) (amended by the Consumer Credit (Further Increase of Monetary Amounts) Order 1998, SI 1998/997, art 3, Schedule).

9 Consumer Credit Act 1974 s 84(2).

10 For the meaning of 'notice' see para 128 note 3 ante. Notice takes effect when received, but where it is given orally, and the agreement so requires, it is treated as not taking effect if not confirmed in writing within seven days: ibid s 84(5).

11 The particulars of the name, address and telephone number of a person stated to be the person to whom notice is to be given must be contained in the credit-token agreement prominently and so as to be easily legible: Consumer Credit (Credit-Token Agreements) Regulations 1983, SI 1983/1555, reg 2. Particulars contained in an agreement made before 19 May 1985 (the date of commencement of the Consumer Credit Act 1974 s 84) where the agreement would have been a credit-token agreement if made on that date need only be contained so as to be easily legible: Consumer Credit (Credit-Token Agreements) Regulations 1983, SI 1983/1555, reg 3.

12 Consumer Credit Act 1974 s 84(3), (4).

13 Ibid s 84(6).

14 Ibid s 84(8).

UPDATE

234-250 Matters Arising During the Period of the Agreement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

247 Misuse of credit-tokens

TEXT AND NOTE 12--Add head (3) to any use, in connection with a distance contract (other than an excepted contract), of a card which is a credit-token: 1974 Act s 84(3A) (inserted by the Consumer Protection (Distance Selling) Regulations 2000, SI 2000/2334). 'Distance contract' and 'excepted contract' both have the meanings given in SI 2000/2334 (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 673): 1974 Act s 84(3B) (inserted by SI 2000/2334).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/9. MATTERS ARISING DURING THE PERIOD OF THE AGREEMENT/(6) NEW CREDIT-TOKENS/248. Duty on issue of new credit-tokens.

(6) NEW CREDIT-TOKENS

248. Duty on issue of new credit-tokens.

Whenever, in connection with a credit-token agreement¹, a credit-token² (other than the first) is given by the creditor³ to the debtor⁴, the creditor must give the debtor a copy⁵ of the executed agreement⁶ (if any) and of any other document referred to in it⁷. If the creditor fails to comply with this requirement he is not entitled, while the default continues, to enforce the agreement⁸, and if the default continues for one month he commits an offence⁹.

These provisions do not apply to a small agreement¹⁰.

- 1 For the meaning of 'credit-token' agreement see para 88 ante.
- 2 For the meaning of 'credit-token' see para 88 ante.
- 3 For the meaning of 'creditor' see para 81 note 2 ante.
- 4 For the meaning of 'debtor' see para 81 note 3 ante.
- 5 As to the meaning of 'copy' see para 174 text and note 4 ante.
- 6 For the meaning of 'executed agreement' see para 115 note 3 ante.
- 7 Consumer Credit Act 1974 s 85(1). Every copy of an executed credit-token agreement given to the debtor under s 85(1) where the agreement may be varied under a power contained in it must comprise an easily legible statement of the current terms of the agreement (whether or not varied in accordance with s 82(1) (see para 243 ante)): Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557, reg 8.
- 8 Consumer Credit Act 1974 s 85(2)(a).
- 9 Ibid s 85(2)(b). An offence under s 85(2) is punishable on summary conviction by a fine not exceeding level 4 on the standard scale: s 167(1), Sch 1 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see para 202 note 19 ante.
- 10 Consumer Credit Act 1974 s 85(3). For the meaning of 'small agreement' see para 108 ante.

UPDATE

234-250 Matters Arising During the Period of the Agreement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

248 Duty on issue of new credit-tokens

TEXT AND NOTE 9--Consumer Credit Act 1974 s 85(2)(b) repealed: SI 2008/1277.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/9. MATTERS ARISING DURING THE PERIOD OF THE AGREEMENT/(7) DEATH/249. Death of debtor or hirer.

(7) DEATH

249. Death of debtor or hirer.

The creditor¹ or owner² under a regulated agreement³ is not entitled, by reason of the death of the debtor⁴ or hirer⁵, to do certain specified acts⁶ (which include, inter alia, termination of the agreement) if at the death the agreement is fully secured⁷. If at the death of the debtor or hirer a regulated agreement is only partly secured or is unsecured, the creditor or owner is entitled, by reason of the death of the debtor or hirer, to do the specified acts on an order of the court⁸ only⁹.

In relation to the termination of an agreement, the above provisions apply only where (1) a period for its duration is specified in the agreement¹⁰; and (2) that period has not ended when the creditor or owner purports to terminate the agreement¹¹, but they apply notwithstanding that, under the agreement, any party is entitled to terminate it before the end of the period so specified¹². They do not prevent the creditor from treating the right to draw on any credit¹³ as restricted or deferred, and taking such steps as may be necessary to make the restriction or deferment effective¹⁴.

Nor do they affect the operation of any agreement providing for payment of sums (a) due under the regulated agreement¹⁵; or (b) becoming due under it on the death of the debtor or hirer¹⁶, out of the proceeds of a policy of assurance on his life¹⁷.

1 For the meaning of 'creditor' see para 81 note 2 ante.

2 For the meaning of 'owner' see para 82 note 1 ante.

3 For the meaning of 'regulated agreement' see para 79 ante.

4 For the meaning of 'debtor' see para 81 note 3 ante.

5 For the meaning of 'hirer' see para 82 note 3 ante.

6 Ie specified in the Consumer Credit Act 1974 s 87(1)(a)-(e): see para 263 post.

7 Ibid s 86(1). An act is done by reason of the death of the debtor or hirer if it is done under a power conferred by the agreement which is (1) exercisable on his death (s 86(6)(a)); or (2) exercisable at will and exercised at any time after his death (s 86(6)(b)).

For the meaning of 'security' see para 200 note 1 ante.

8 For the meaning of 'court' see para 134 note 9 ante.

9 Consumer Credit Act 1974 s 86(2). The court must make an order under s 86(2) if, but only if, the creditor or owner proves that he has been unable to satisfy himself that the present and future obligations of the debtor or hirer under the agreement are likely to be discharged: s 128.

10 Ibid s 86(3)(a).

11 Ibid s 86(3)(b).

12 Ibid s 86(3).

13 For the meaning of 'credit' see para 83 ante.

14 Consumer Credit Act 1974 s 86(4).

15 Ibid s 86(5)(a).

16 Ibid s 86(5)(b).

17 Ibid s 86(5).

UPDATE

234-250 Matters Arising During the Period of the Agreement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/9. MATTERS ARISING DURING THE PERIOD OF THE AGREEMENT/(8) LIABILITY OF CREDITOR FOR BREACHES BY SUPPLIER/250. Liability of creditor.

(8) LIABILITY OF CREDITOR FOR BREACHES BY SUPPLIER

250. Liability of creditor.

If the debtor¹ under a debtor-creditor-supplier agreement² has, in relation to a transaction financed³ by the agreement, any claim against the supplier⁴ in respect of a misrepresentation or breach of contract, he has a like claim against the creditor⁵, who, with the supplier, is accordingly jointly and severally liable to the debtor⁶. In an action brought against the creditor under the above provision he is entitled, in accordance with rules of court, to have the supplier made a party to the proceedings⁷. Subject to any agreement between them, the creditor is entitled to be indemnified by the supplier for loss suffered by the creditor in satisfying such liability, including costs reasonably incurred by him in defending proceedings instituted by the debtor⁸.

The above provisions apply notwithstanding that the debtor, in entering into the transaction, exceeded the credit limit⁹ or otherwise contravened any term of the agreement¹⁰.

1 For the meaning of 'debtor' see para 81 note 3 ante.

2 If an agreement falling within the Consumer Credit Act 1974 s 12(b) or s 12(c) (see para 87 ante). For the meaning of 'debtor-creditor-supplier agreement' see para 87 ante.

3 For the meaning of 'financed' see para 83 note 8 ante.

4 For the meaning of 'supplier' see para 86 note 8 ante.

5 As to the extent of the debtor's ability to bring a like claim against the creditor see *United Dominions Trust Ltd v Taylor* 1980 SLT 28, Sh Ct. For the meaning of 'creditor' see para 81 note 2 ante.

6 Consumer Credit Act 1974 s 75(1). See also *Jarrett v Barclays Bank plc*[1997] 2 All ER 484, [1997] 3 WLR 654, CA. The Consumer Credit Act 1974 s 75(1) does not apply to a claim (1) under a non-commercial agreement (s 75(3)(a)); or (2) so far as the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000 (s 75(3)(b) (amended by the Consumer Credit (Increase of Monetary Limits) Order 1983, SI 1983/1878, arts 3, 4, Schedule Pts I, II)). For the meaning of non-commercial agreement see para 107 ante.

7 Consumer Credit Act 1974 s 75(5).

8 Ibid s 75(2).

9 For the meaning of 'credit limit' see para 84 note 6 ante.

10 Consumer Credit Act 1974 s 75(4).

UPDATE

234-250 Matters Arising During the Period of the Agreement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory

Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

250 Liability of creditor

NOTE 6--The 1974 Act s 75 applies to transactions entered into abroad: *Office of Fair Trading v Lloyds TSB plc*[2007] UKHL 48, [2008] 1 All ER 205.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/10. TERMINATION, DEFAULT AND ENFORCEMENT/(1) EARLY SETTLEMENT BY DEBTOR/251. Right to effect early settlement.

10. TERMINATION, DEFAULT AND ENFORCEMENT

(1) EARLY SETTLEMENT BY DEBTOR

251. Right to effect early settlement.

The debtor¹ under a regulated consumer credit agreement² is entitled at any time, by notice³ to the creditor⁴ and the payment to the creditor of all amounts payable by the debtor to him under the agreement (less any rebate allowable⁵), to discharge the debtor's indebtedness under the agreement⁶.

1 For the meaning of 'debtor' see para 81 note 3 ante.

2 For the meaning of 'regulated' see para 79 ante; and for the meaning of 'consumer credit agreement' see para 81 ante.

3 For the meaning of 'notice' see para 128 note 3 ante. A notice may embody the exercise by the debtor of any option to purchase goods conferred on him by the agreement, and deal with any other matter arising on, or in relation to, the termination of the agreement: Consumer Credit Act 1974 s 94(2). For the meaning of 'goods' see para 82 note 5 ante.

4 For the meaning of 'creditor' see para 81 note 2 ante.

5 Ie under the Consumer Credit Act 1974 s 95: see para 253 post.

6 Ibid s 94(1).

UPDATE

251-268 Termination, Default and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/10. TERMINATION, DEFAULT AND ENFORCEMENT/(1) EARLY SETTLEMENT BY DEBTOR/252. Effect of early settlement on linked transactions.

252. Effect of early settlement on linked transactions.

Where for any reason the indebtedness of the debtor¹ under a regulated consumer credit agreement² is discharged before the time fixed by the agreement, he, and any relative³ of his, is at the same time discharged from any liability under a linked transaction⁴, other than a debt which has already become payable⁵. This provision does not apply to a linked transaction which is itself an agreement providing the debtor or his relative with credit⁶.

- 1 For the meaning of 'debtor' see para 81 note 3 ante.
- 2 For the meaning of 'regulated' see para 79 ante; and for the meaning of 'consumer credit agreement' see para 81 ante.
- 3 For the meaning of 'relative' see para 116 note 12 ante.
- 4 As to linked transactions see paras 90, 196-198 ante.
- 5 Consumer Credit Act 1974 s 96(1). Regulations may exclude linked transactions of the prescribed description from the operation of s 96(1): s 96(3). As to the excluded transactions see the Consumer Credit (Linked Transactions) (Exemptions) Regulations 1983, SI 1983/1560; and para 198 ante.
- 6 Consumer Credit Act 1974 s 96(2). For the meaning of 'credit' see para 83 ante.

UPDATE

251-268 Termination, Default and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/10. TERMINATION, DEFAULT AND ENFORCEMENT/(1) EARLY SETTLEMENT BY DEBTOR/253. Rebate on early settlement.

253. Rebate on early settlement.

A rebate¹ of charges for credit² may be allowed to the debtor³ under a regulated consumer credit agreement⁴ where⁵, on refinancing, on breach of the agreement, or for any other reason, his indebtedness is discharged or becomes payable before the time fixed by the agreement, or any sum becomes payable by him before the time so fixed⁶.

The rebate is calculated⁷ by reference to any sums paid or payable by the debtor or his relative⁸ under or in connection with the agreement (whether to the creditor⁹ or some other person), including sums under linked transactions¹⁰ and other items in the total charge for credit¹¹.

- 1 As to entitlement to a rebate see para 254 post.
- 2 For the meaning of 'credit' see para 83 ante.
- 3 For the meaning of 'debtor' see para 81 note 3 ante.
- 4 For the meaning of 'regulated' see para 79 ante; and for the meaning of 'consumer credit agreement' see para 81 ante.
- 5 Ie under the Consumer Credit Act 1974 s 94: see para 251 ante.
- 6 Ibid s 95(1). Where a creditor seeks to recover amounts outstanding under a regulated consumer credit agreement, judgment should be entered for the full outstanding amount without any allowance for the rebate, although for the protection of the debtor the judgment should be indorsed with a notice drawing attention to his potential entitlement to a rebate: *Forward Trust Ltd v Whymark* [1990] 2 QB 670, [1989] 3 All ER 915, CA.
- 7 As to the calculation of the rebate see para 255 post. See *Forward Trust Ltd v Whymark* [1990] 2 QB 670, [1989] 3 All ER 915, CA; and note 6 supra. See also *Southern and District Finance plc v Barnes* [1995] CCLR 62.
- 8 For the meaning of 'relative' see para 116 note 12 ante.
- 9 For the meaning of 'creditor' see para 81 note 2 ante.
- 10 As to linked transactions see paras 90, 196-198 ante.
- 11 Consumer Credit Act 1974 s 95(2). As to the total charge for credit see paras 91, 224 et seq ante.

UPDATE

251-268 Termination, Default and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/10. TERMINATION, DEFAULT AND ENFORCEMENT/(1) EARLY SETTLEMENT BY DEBTOR/254. Entitlement to rebate.

254. Entitlement to rebate.

The creditor¹ must allow the debtor² under a regulated consumer credit agreement³ a rebate⁴ at least equal to that calculated in accordance with prescribed provisions⁵ whenever early settlement takes place, that is to say whenever⁶, on refinancing, on breach of the agreement, or for any other reason, the indebtedness of the debtor is discharged or becomes payable before the time fixed by the agreement, or any sum becomes payable by him before the time so fixed⁷.

The above provision does not apply (1) in the case of (a) agreements under which no payments of items included in the total charge for credit⁸ are required to be made in respect of the period of time commencing on the settlement date⁹; or (b) agreements for running-account credit¹⁰; and (2) where a hire-purchase or conditional sale agreement is terminated¹¹ by the debtor¹².

Where a sum less than the total remaining indebtedness of the debtor is required to be paid before the time fixed by the agreement, no consequential payment of any subsequent instalment required to be paid under the agreement, or under a modifying agreement not relating to the provision of additional credit or an increase in the total charge for credit, entitles the debtor to a rebate¹³.

1 For the meaning of 'creditor' see para 81 note 2 ante.

2 For the meaning of 'debtor' see para 81 note 3 ante.

3 For the meaning of 'regulated' see para 79 ante; and for the meaning of 'consumer credit agreement' see para 81 ante.

4 'Rebate' means a rebate of charges for credit included in the total charge for credit: Consumer Credit (Rebate on Early Settlement) Regulations 1983, SI 1983/1562, reg 1(2). Total charge for credit is determined in accordance with the Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51 (as amended): see para 224 et seq ante.

5 As to the calculation of rebates see para 255 post.

6 Ie under the Consumer Credit Act 1974 s 94 (see para 251 ante).

7 Consumer Credit (Rebate on Early Settlement) Regulations 1983, SI 1983/1562, reg 2(1). The length of any period for the purposes of calculations under the Consumer Credit (Rebate on Early Settlement) Regulations 1983, SI 1983/1562, is determined in accordance with the Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, reg 11 (other than reg 11(5)(a): see para 232 ante): Consumer Credit (Rebate on Early Settlement) Regulations 1983, SI 1983/1562, reg 1(3).

8 As to the total charge for credit see paras 91, 224 et seq ante.

9 As to the settlement date see *Forward Trust Ltd v Whymark* [1990] 2 QB 670, [1989] 3 All ER 915, CA.

10 Consumer Credit (Rebate on Early Settlement) Regulations 1983, SI 1983/1562, reg 2(2).

11 Ie under the Consumer Credit Act 1974 s 99: see para 257 post.

12 Consumer Credit (Rebate on Early Settlement) Regulations 1983, SI 1983/1562, reg 2(3). As to the right of a debtor to terminate a regulated hire-purchase or conditional sale agreement see the Consumer Credit Act 1974 s 99; and para 257 post.

13 Consumer Credit (Rebate on Early Settlement) Regulations 1983, SI 1983/1562, reg 2(4).

UPDATE

251-268 Termination, Default and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

254 Entitlement to rebate

TEXT AND NOTES--SI 1983/1562 replaced by the Consumer Credit (Early Settlement) Regulations 2004, SI 2004/1483 (amended by SI 2004/2619).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/10. TERMINATION, DEFAULT AND ENFORCEMENT/(1) EARLY SETTLEMENT BY DEBTOR/255. Calculation of rebate.

255. Calculation of rebate.

The rebate¹ is calculated by reference to all sums paid or payable by the debtor² or a relative³ of his under or in connection with the agreement (whether to the creditor⁴ or any other person) and included in the total charge for credit⁵. There may be excluded from the calculation of the rebate:

- 127 (1) taxes, duties, fees and charges payable under or by virtue of any statute or payable to the Secretary of State or any other minister or government department⁶ or to a local authority or similar body outside the United Kingdom⁷;
- 128 (2) sums paid or payable under linked transactions⁸, except sums paid before the settlement date⁹ in respect of cash¹⁰, goods or services to be supplied under the transaction wholly or partly after that date¹¹;
- 129 (3) sums payable under linked transactions excluded¹² from the operation of the provisions¹³ setting out the effect of early payment on linked transactions¹⁴;
- 130 (4) any fee or commission paid by the debtor or a relative of his under a credit brokerage¹⁵ contract relating to the agreement¹⁶.

In the following cases the amount of the rebate is given by prescribed formulae:

- 131 (a) an agreement for fixed-sum credit¹⁷ provided, and to be repayable, in a single lump sum at the end of a specified period¹⁸;
- 132 (b) agreements under which credit is repayable by instalments (i) where credit is repayable in equal instalments at equal intervals¹⁹; or (ii) where credit is repayable in unequal instalments or in instalments at unequal intervals²⁰;
- 133 (c) agreements under which credit is repayable by instalments to be made at other than monthly or shorter intervals and where early settlement takes place between two instalment dates for the repayment of credit²¹ under the agreement²²; and
- 134 (d) where a sum less than the total remaining indebtedness of the debtor is required to be paid before the time fixed by the agreement²³.

Where, under a power contained in the agreement, the rate or amount of any item included in the total charge for credit, the amount of any instalment of repayment of credit or the time fixed by the agreement for the debtor's indebtedness to be discharged is or can be varied, the rate or amount, as the case may be, of any item to be included in the total charge for credit or the amount of any instalment of repayment of credit or the time fixed by the agreement for the debtor's indebtedness to be discharged for the purpose of calculation of the rebate is taken to be, in respect of any period of time commencing on or after the settlement date, the rate or amount or time subsisting at that date²⁴. Special provision is made in respect of sums paid under agreements made before 1 April 1977²⁵.

1 For the meaning of 'rebate' see para 254 note 4 ante.

2 For the meaning of 'debtor' see para 81 note 3 ante.

3 For the meaning of 'relative' see para 116 note 12 ante.

4 For the meaning of 'creditor' see para 81 note 2 ante.

5 Consumer Credit (Rebate on Early Settlement) Regulations 1983, SI 1983/1562, reg 3(1). Total charge for credit is determined in accordance with the Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51 (as amended): see para 224 et seq ante.

6 The Civil Aviation Authority and a minister or department of the government of Northern Ireland or of any country outside the United Kingdom are included for this purpose: Consumer Credit (Rebate on Early Settlement) Regulations 1983, SI 1983/1562, reg 3(2)(a). For the meaning of 'United Kingdom' see para 70 note 4 ante.

7 Ibid reg 3(2)(a).

8 As to linked transactions see paras 90, 196-198 ante.

9 Subject to the Consumer Credit (Rebate on Early Settlement) Regulations 1983, SI 1983/1562, reg 6(3), where the agreement provides for the credit to be repaid by instalments to be made only at monthly or shorter intervals and early settlement takes place between two instalment dates for repayment of credit under the agreement, the settlement date is taken to be the date of the instalment due under the agreement immediately following (1) the date of service of a notice on the creditor under the Consumer Credit Act 1974 s 94 (see para 251 ante), if accompanied by payment of the amount due on early settlement (less any rebate allowable under these provisions), or any later date specified as the date for early settlement in the notice, if the debtor pays the amount in question not later than that date; (2) the date specified as the date for payment of any sum by the debtor involving early settlement in any notice served under s 76(1) (see para 234 ante), any default notice or any notice served under s 98(1) (see para 262 post), if the debtor pays the amount in question (less any rebate allowable under these provisions) not later than that date; (3) in any other case, the date on which the debtor pays any sum involving early settlement: Consumer Credit (Rebate on Early Settlement) Regulations 1983, SI 1983/1562, reg 6(1).

Subject to reg 6(3), where the agreement provides for the credit to be repaid by instalments to be made at other than monthly or shorter intervals and early settlement takes place between two instalment dates for repayment of credit under the agreement, the settlement date is taken to be 14 days after the date referred to in head (1), (2) or (3) above, as the case may be: reg 6(2).

Where the creditor has given the debtor a statement under the Consumer Credit Act 1974 s 97 (see para 256 post) indicating the amount of the payment required to discharge the debtor's indebtedness under the agreement, the settlement date is taken to be the date specified in the Consumer Credit (Settlement Information) Regulations 1983, SI 1983/1564, reg 3 (see para 256 post) if the debtor pays the amount (less any rebate allowable under these provisions) not later than that date: Consumer Credit (Rebate on Early Settlement) Regulations 1983, SI 1983/1562, reg 6(3). In any other case, the settlement date is the date on which the debtor pays any sum involving early settlement: reg 6(4).

10 For the meaning of 'cash' see para 83 note 1 ante.

11 Consumer Credit (Rebate on Early Settlement) Regulations 1983, SI 1983/1562, reg 3(2)(b).

12 Ie by the Consumer Credit (Linked Transactions) (Exemptions) Regulations 1983, SI 1983/1560 (see para 198 ante).

13 Ie the Consumer Credit Act 1974 s 96(1) (see para 252 ante).

14 Consumer Credit (Rebate on Early Settlement) Regulations 1983, SI 1983/1562, reg 3(2)(c).

15 As to credit brokerage see para 272 post.

16 Consumer Credit (Rebate on Early Settlement) Regulations 1983, SI 1983/1562, reg 3(2)(d) (added by SI 1989/596).

17 For the meaning of 'fixed-sum credit' see para 85 ante.

18 Consumer Credit (Rebate on Early Settlement) Regulations 1983, SI 1983/1562, reg 4(1). For the prescribed formula see Sch 1.

19 Ibid reg 4(2)(i). For the prescribed formula see Sch 2 Pt I.

20 Ibid reg 4(2)(ii). For the prescribed formula see Sch 2 Pt II.

21 'Repayment of credit' means repayment of credit with any amount included in the total charge for credit payable at the same time: ibid reg 1(4). For the meaning of 'credit' see para 83 ante.

22 Ibid reg 4(3). For the prescribed formula see Sch 3.

23 Ibid reg 4(4). For the prescribed formula see Sch 4. As to the deferment of the settlement date for calculation of the rebate in Schs 1-4, see reg 5. For the determination of whether repayments of credit under the agreement may be regarded as being in equal instalments or at equal intervals for the purpose of any formula set out in Schs 2-4 see Sch 5: reg 4(5). The examples set out in Schs 1-4 have effect only for illustrating the use of the formulae, and in the case of conflict between any example and any other provision of the Consumer Credit (Rebate on Early Settlement) Regulations 1983, SI 1983/1562, that other provision prevails: reg 4(6).

24 Ibid reg 7.

25 See ibid reg 8; and the Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51, reg 5(2).

UPDATE

251-268 Termination, Default and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

255 Calculation of rebate

TEXT AND NOTES--SI 1983/1562 replaced by the Consumer Credit (Early Settlement) Regulations 2004, SI 2004/1483 (amended by SI 2004/2619).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/10. TERMINATION, DEFAULT AND ENFORCEMENT/(1) EARLY SETTLEMENT BY DEBTOR/256. Settlement statements.

256. Settlement statements.

The creditor¹ under a regulated consumer credit agreement², within 12 working days after he has received a request in writing to that effect from the debtor³, must give the debtor a statement in the prescribed form⁴ indicating, according to the information to which it is practicable for him to refer, the amount of the payment required to discharge the debtor's indebtedness under the agreement, together with the prescribed particulars⁵ showing how the amount is arrived at⁶.

The above requirement does not apply to a request made less than one month after a previous request relating to the same agreement was complied with⁷. If the creditor fails to comply with the requirement he is not entitled, while the default continues, to enforce the agreement⁸, and if the default continues for one month he commits an offence⁹.

1 For the meaning of 'creditor' see para 81 note 2 ante.

2 For the meaning of 'regulated' see para 79 ante; and for the meaning of 'consumer credit agreement' see para 81 ante.

3 For the meaning of 'debtor' see para 81 note 3 ante.

4 Subject to the Consumer Credit (Settlement Information) Regulations 1983, SI 1983/1564, reg 2(2), any statement must be in writing and contain prescribed information and particulars: reg 2(1). For the prescribed information and particulars see reg 2, Schedule. Where the agreement provides for the credit to be repaid by instalments to be made only at monthly or shorter intervals, the settlement date is taken to be the date of the instalment due under the agreement immediately following the expiration of a period of 28 days after the day on which the creditor has received a request in writing for a statement from the debtor, unless a later date is requested by the debtor: reg 3(1). Where reg 3(1) does not apply, the settlement date is taken to be the date of the expiration of a period of 28 days after the day on which the creditor has received a request in writing for a statement from the debtor, unless a later date is requested by the debtor: reg 3(2).

Where a creditor under a regulated agreement for running-account credit receives a written request from the debtor for a statement under the Consumer Credit Act 1974 s 97 and gives to the debtor a statement under s 78(4) (see para 238 ante) within one month after he has received the request, showing according to the information to which it is practicable for him to refer the state of the account at that time, any statement to be given under the Consumer Credit (Settlement Information) Regulations 1983, SI 1983/1564, reg 2(1) may, instead of containing the prescribed information and particulars, state that the amount of the payment required to discharge the debtor's indebtedness under the agreement is the amount shown in the statement given under the Consumer Credit Act 1974 s 78(4) of the balance at the end of the period to which that statement relates: Consumer Credit (Settlement Information) Regulations 1983, SI 1983/1564, reg 2(2).

5 As to the prescribed particulars see note 4 supra.

6 See the Consumer Credit Act 1974 s 97(1); and the Consumer Credit (Settlement Information) Regulations 1983, SI 1983/1564, reg 4. See also *Lombard North Central plc v Stobart* [1990] CCLR 53, CA.

A statement given by a creditor under the Consumer Credit Act 1974 s 97(1) is binding on him: see s 172(1), (3); and para 303 post.

7 Ibid s 97(2). A previous request made by telephone does not come within the scope of s 97(2): *Home Insulation Ltd v Wadsley* (1987) 153 JP 92, DC.

8 Consumer Credit Act 1974 s 97(3)(a).

9 Ibid s 97(3)(b). An offence under s 97(3) is punishable on summary conviction by a fine not exceeding level 3 on the standard scale: s 167, Sch 1 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see para 202 note 19 ante.

UPDATE

251-268 Termination, Default and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

256 Settlement statements

NOTE 4--SI 1983/1564 reg 3(1) omitted, reg 3(2) amended: SI 2004/1483. SI 1983/1564 Schedule amended: SI 2004/1483, SI 2004/3262.

NOTE 6--SI 1983/1564 reg 4 amended: SI 2004/1483.

TEXT AND NOTE 9--Consumer Credit Act 1974 s 97(3)(b) repealed: SI 2008/1277.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/10. TERMINATION, DEFAULT AND ENFORCEMENT/(2) TERMINATION BY DEBTOR OR HIRER/257. Debtor's right to terminate a regulated hire-purchase or conditional sale agreement.

(2) TERMINATION BY DEBTOR OR HIRER

257. Debtor's right to terminate a regulated hire-purchase or conditional sale agreement.

At any time before the final payment¹ by the debtor² under a regulated hire-purchase agreement³ or regulated conditional sale agreement⁴ falls due, the debtor is entitled to terminate the agreement by giving notice⁵ to any person entitled or authorised to receive the sums payable under the agreement⁶. Termination of an agreement does not affect any liability under the agreement which has accrued before the termination⁷.

The right to terminate does not apply to a conditional sale agreement relating to land⁸ after the title to the land has passed to the debtor⁹. In the case of a conditional sale agreement relating to goods¹⁰, where the property in the goods, having become vested in the debtor, is transferred to a person who does not become the debtor under the agreement, the debtor is not thereafter entitled to terminate the agreement¹¹.

- 1 As to the meaning of 'payment' see para 84 note 5 ante.
- 2 For the meaning of 'debtor' see para 81 note 3 ante.
- 3 For the meaning of 'regulated' see para 79 ante; and for the meaning of 'hire-purchase agreement' see para 95 ante.
- 4 For the meaning of 'conditional sale agreement' see para 93 ante.
- 5 For the meaning of 'notice' see para 128 note 3 ante.
- 6 Consumer Credit Act 1974 s 99(1).
- 7 Ibid s 99(2). As to the debtor's liability on termination see s 100; and para 258 post.
- 8 For the meaning of 'land' see para 93 note 2 ante.
- 9 Consumer Credit Act 1974 s 99(3).
- 10 For the meaning of 'goods' see para 82 note 5 ante.
- 11 Consumer Credit Act 1974 s 99(4). Subject to s 99(4), where a debtor under a conditional sale agreement relating to goods terminates the agreement under s 99 after the property in the goods has become vested in him, the property in the goods thereupon vests in the person (the 'previous owner') in whom it was vested immediately before it became vested in the debtor: s 99(5). If the previous owner has died, or any other event has occurred whereby that property, if vested in him immediately before that event, would thereupon have vested in some other person, the property is treated as having devolved as if it had been vested in the previous owner immediately before his death or immediately before that event, as the case may be: s 99(5) proviso.

UPDATE

251-268 Termination, Default and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements

mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/10. TERMINATION, DEFAULT AND ENFORCEMENT/(2) TERMINATION BY DEBTOR OR HIRER/258. Liability of debtor on voluntary termination.

258. Liability of debtor on voluntary termination.

Where a regulated hire-purchase¹ or regulated conditional sale agreement² is terminated by the debtor³, the debtor is liable, unless the agreement provides for a smaller payment, or does not provide for any payment, to pay to the creditor⁴ the amount (if any) by which one-half of the total price⁵ exceeds the aggregate of the sums paid and the sums due in respect of the total price immediately before the termination⁶.

If in any action the court⁷ is satisfied that a sum less than the amount specified above would be equal to the loss sustained by the creditor in consequence of the termination of the agreement by the debtor, the court may make an order for the payment of that sum in lieu of the amount so specified⁸. If the debtor has contravened an obligation to take reasonable care of the goods⁹ or land¹⁰, the amount payable on termination must be increased by the sum required to recompense the creditor for that contravention¹¹.

Where the debtor, on the termination of the agreement, wrongfully retains possession of goods to which the agreement relates, then, in any action brought by the creditor to recover possession of the goods from the debtor, the court, unless it is satisfied that having regard to the circumstances it would not be just to do so, must order the goods to be delivered to the creditor without giving the debtor an option to pay the value of the goods¹².

1 For the meaning of 'regulated' see para 79 ante; and for the meaning of 'hire-purchase agreement' see para 95 ante.

2 For the meaning of 'conditional sale agreement' see para 93 ante.

3 ie terminated under the Consumer Credit Act 1974 s 99: see para 257 ante. For the meaning of 'debtor' see para 81 note 3 ante.

4 For the meaning of 'creditor' see para 81 note 2 ante.

5 For the meaning of 'total price' see para 83 note 9 ante.

6 Consumer Credit Act 1974 s 100(1). Where under a hire-purchase or conditional sale agreement the creditor is required to carry out any installation and the agreement specifies, as part of the total price, the amount to be paid in respect of the installation (the 'installation charge'), 'one-half of the total price' means the aggregate of the installation charge and one-half of the remainder of the total price: s 100(2). For the meaning of 'installation' see para 265 note 9 post.

As to the debtor's entitlement to equitable relief against forfeiture see *Transag Haulage Ltd v Leyland DAF Finance plc* [1994] CCLR 111, [1994] 2 BCLC 88.

As to the position where there is a history of default by the debtor see *Goker v NWS Bank plc* [1990] CCLR 34, (1990) Times, 23 May, CA.

7 For the meaning of 'court' see para 134 note 9 ante.

8 Consumer Credit Act 1974 s 100(3).

9 For the meaning of 'goods' see para 82 note 5 ante.

10 For the meaning of 'land' see para 93 note 2 ante.

11 Consumer Credit Act 1974 s 100(4). Section 100(2) (see note 6 supra) has effect accordingly: s 100(4).

12 Ibid s 100(5). As to the court's power to order specific delivery in the case of regulated hire-purchase and conditional sale agreements see s 133; and para 293 post. As to such a power generally see the Torts (Interference with Goods) Act 1977; and TORT.

UPDATE

251-268 Termination, Default and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/10. TERMINATION, DEFAULT AND ENFORCEMENT/(2) TERMINATION BY DEBTOR OR HIRER/259. Right to terminate hire agreement.

259. Right to terminate hire agreement.

The hirer¹ under a regulated consumer hire agreement² is entitled to terminate the agreement by giving notice³ to any person entitled or authorised to receive the sums payable under the agreement⁴. Termination of an agreement does not affect any liability under the agreement which has accrued before the termination⁵.

A notice to terminate must not expire earlier than 18 months after the making of the agreement⁶, but apart from that the minimum period of notice to be given, unless the agreement provides for a shorter period, is (1) if the agreement provides for the making of payments by the hirer to the owner⁷ at equal intervals, the length of one interval or three months, whichever is less⁸; (2) if the agreement provides for the making of such payments at differing intervals, the length of the shortest interval or three months, whichever is less⁹; and (3) in any other case, three months¹⁰.

The right of termination does not apply to:

- 135 (a) any agreement which provides for the making by the hirer of payments which in total (and without breach of the agreement) exceed £1,500 in any year¹¹; or
- 136 (b) any agreement where (i) goods¹² are bailed to the hirer for the purposes of a business¹³ carried on by him, or the hirer holds himself out as requiring the goods for those purposes; and (ii) the goods are selected by the hirer, and acquired by the owner for the purposes of the agreement at the request of the hirer from any person other than the owner's associate¹⁴; or
- 137 (c) any agreement where the hirer requires, or holds himself out as requiring, the goods for the purpose of bailing or hiring them to other persons in the course of a business carried on by him¹⁵.

The right of termination does not apply to agreements made by a person carrying on a consumer hire business¹⁶ who, on application to the Director General of Fair Trading¹⁷, has obtained a direction to that effect¹⁸.

1 For the meaning of 'hirer' see para 82 note 3 ante.

2 For the meaning of 'regulated' see para 79 ante; and for the meaning of 'consumer hire agreement' see para 82 ante.

3 For the meaning of 'notice' see para 128 note 3 ante.

4 Consumer Credit Act 1974 s 101(1).

5 Ibid s 101(2).

6 Where the agreement is a modifying agreement (see para 191 et seq ante), the period of 18 months runs from the time of the making of the original agreement: ibid s 101(9).

7 For the meaning of 'owner' see para 82 note 1 ante.

8 Consumer Credit Act 1974 s 101(3), (4).

9 Ibid s 101(3), (5).

10 Ibid s 101(3), (6).

11 Ibid s 101(7)(a) (amended by the Consumer Credit (Further Increase of Monetary Amounts) Order 1998, SI 1998/997, art 3, Schedule).

12 For the meaning of 'goods' see para 82 note 5 ante.

13 For the meaning of 'business' see para 81 note 7 ante.

14 Consumer Credit Act 1974 s 101(7)(b). As to associates see para 92 ante.

15 Ibid s 101(7)(c).

16 For the meaning of 'consumer hire business' see para 82 ante.

17 As to the Director General of Fair Trading see para 110 ante.

18 See the Consumer Credit Act 1974 s 101(8). The director may only give such a direction if he is satisfied that it is in the interests of hirers to do so, and it may be subject to conditions: see s 101(8).

UPDATE

251-268 Termination, Default and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

259 Right to terminate hire agreement

TEXT AND NOTES--If it appears to the Office of Fair Trading that it would be in the interests of hirers to do so, it may by general notice direct that, subject to such conditions (if any) as it may specify, the 1974 Act s 101 does not apply to a consumer hire agreement if the agreement falls within a specified description, and the 1974 Act is to have effect accordingly: s 101(8A) (added by the Consumer Credit Act 2006 s 63(1)).

TEXT AND NOTE 18--1974 Act s 101(8) amended: Enterprise Act 2002 Sch 25 para 6(26); 2006 Act s 63(2).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/10. TERMINATION, DEFAULT AND ENFORCEMENT/(2) TERMINATION BY DEBTOR OR HIRER/260. Rescission.

260. Rescission.

Where the debtor¹ or hirer² under a regulated agreement³ claims to have a right to rescind⁴ the agreement, each of the following are deemed to be the agent of the creditor⁵ or owner⁶ for the purpose of receiving any notice⁷ rescinding the agreement which is served by the debtor or hirer: (1) a credit-broker⁸ or supplier⁹ who was the negotiator¹⁰ in antecedent negotiations¹¹; and (2) any person who, in the course of a business¹² carried on by him, acted on behalf of the debtor or hirer in any negotiations for the agreement¹³.

- 1 For the meaning of 'debtor' see para 81 note 3 ante.
- 2 For the meaning of 'hirer' see para 82 note 3 ante.
- 3 For the meaning of 'regulated agreement' see para 79 ante.
- 4 'Rescind' does not include (1) service of a notice of cancellation (Consumer Credit Act 1974 s 102(2)(a)); or (2) termination of an agreement under s 99 (see para 257 ante) or s 101 (see para 259 ante), or by the exercise of a right or power in that behalf expressly conferred by the agreement (s 102(2)(b)). For the meaning of 'notice of cancellation' see para 185 ante.
- 5 For the meaning of 'creditor' see para 81 note 2 ante.
- 6 For the meaning of 'owner' see para 82 note 1 ante.
- 7 For the meaning of 'notice' see para 128 note 3 ante.
- 8 For the meaning of 'credit-broker' see para 94 ante.
- 9 For the meaning of 'supplier' see para 86 note 8 ante.
- 10 For the meaning of 'negotiator' see para 177 ante.
- 11 Consumer Credit Act 1974 s 102(1)(a). For the meaning of 'antecedent negotiations' see para 177 ante.
- 12 For the meaning of 'business' see para 81 note 7 ante.
- 13 Consumer Credit Act 1974 s 102(1)(b). A person deemed to be an agent under these provisions is under a duty to forward any notice received by him to his deemed principal: see s 175; and para 178 ante.

UPDATE

251-268 Termination, Default and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/10. TERMINATION, DEFAULT AND ENFORCEMENT/(2) TERMINATION BY DEBTOR OR HIRER/261. Termination statements.

261. Termination statements.

If an individual¹ (the 'customer') serves on any person (the 'trader') a notice² (1) stating that (a) the customer was the debtor³ or hirer⁴ under a regulated agreement⁵ described in the notice, and the trader was the creditor⁶ or owner⁷ under the agreement; and (b) the customer has discharged his indebtedness to the trader under the agreement; and (c) the agreement has ceased to have any operation⁸; and (2) requiring the trader to give the customer a notice, signed by or on behalf of the trader, confirming that those statements are correct⁹, the trader must, within 12 working days after receiving the notice, either comply with it or serve¹⁰ on the customer a counter-notice stating that, as the case may be, he disputes the correctness of the notice or asserts that the customer is not indebted to him under the agreement¹¹.

If the trader fails to comply with the notice or serve a counter-notice, and the default continues for one month, he commits an offence¹². However, he need not comply or serve a counter-notice if he has previously done so on the service of another notice in respect of the same agreement¹³.

The above provisions do not apply to a non-commercial agreement¹⁴.

1 For the meaning of 'individual' see para 80 note 1 ante.

2 For the meaning of 'notice' see para 128 note 3 ante.

3 For the meaning of 'debtor' see para 81 note 3 ante.

4 For the meaning of 'hirer' see para 82 note 3 ante.

5 For the meaning of 'regulated agreement' see para 79 ante.

6 For the meaning of 'creditor' see para 81 note 2 ante.

7 For the meaning of 'owner' see para 82 note 1 ante.

8 Consumer Credit Act 1974 s 103(1)(a).

9 Ibid s 103(1)(b). A notice given by a trader in compliance with s 103(1)(b) is binding on him: see s 172(2), (3); and para 303 post.

10 As to service of documents see para 314 post.

11 See the Consumer Credit Act 1974 s 103(1); and the Consumer Credit (Prescribed Periods for Giving Information) Regulations 1983, SI 1983/1569, reg 2, Schedule. Where the trader disputes the correctness of the notice he must give particulars of the way in which he alleges it to be wrong: Consumer Credit Act 1974 s 103(2).

A notice given by a trader under s 103(1) asserting that the customer is not indebted to him under an agreement is binding on the trader: see s 172(2), (3); and para 303 post.

12 Ibid s 103(5). The offence is punishable on summary conviction by a fine not exceeding level 3 on the standard scale: s 167, Sch 1 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see para 202 note 19 ante.

13 Consumer Credit Act 1974 s 103(3).

14 Ibid s 103(4). For the meaning of 'non-commercial agreement' see para 107 ante.

UPDATE

251-268 Termination, Default and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

261 Termination statements

TEXT AND NOTE 12--Consumer Credit Act 1974 s 103(5) repealed, s 103(6) added: SI 2008/1277.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/10. TERMINATION, DEFAULT AND ENFORCEMENT/(3) TERMINATION BY CREDITOR OR OWNER IN NON-DEFAULT CASES/262. Duty to give notice to terminate in non-default cases.

(3) TERMINATION BY CREDITOR OR OWNER IN NON-DEFAULT CASES

262. Duty to give notice to terminate in non-default cases.

The creditor¹ or owner² is not entitled to terminate a regulated agreement³ except by or after giving the debtor⁴ or hirer⁵ not less than seven days' notice⁶ of the termination⁷. The requirement to give notice applies only where (1) a period for the duration of the agreement is specified in the agreement⁸; and (2) that period has not ended when the creditor or owner does an act⁹ terminating the agreement¹⁰, but so applies notwithstanding that, under the agreement, any party is entitled to terminate it before the end of the period so specified¹¹.

A notice is ineffective if it is not in the prescribed form¹².

The requirement does not prevent a creditor from treating the right to draw on any credit¹³ as restricted or deferred and taking such steps as may be necessary to make the restriction or deferment effective¹⁴.

The requirement does not apply to the termination of a regulated agreement by reason of any breach by the debtor or hirer of the agreement¹⁵.

Regulations may provide that the requirement is not to apply to specified agreements¹⁶. Regulations have, in fact, provided that the requirement does not apply in the case of non-commercial agreements¹⁷ in relation to which no security¹⁸ has been provided¹⁹.

1 For the meaning of 'creditor' see para 81 note 2 ante.

2 For the meaning of 'owner' see para 82 note 1 ante.

3 For the meaning of 'regulated agreement' see para 79 ante.

4 For the meaning of 'debtor' see para 81 note 3 ante.

5 For the meaning of 'hirer' see para 82 note 3 ante.

6 For the meaning of 'notice' see para 128 note 3 ante.

7 Consumer Credit Act 1974 s 98(1). Similarly, the creditor or owner is not entitled to enforce a term of a regulated agreement except by or after giving the debtor or hirer not less than seven days' notice of his intention to do so: see s 76; and para 234 ante. If the creditor or owner wishes to take any of the steps in s 76(1) (see para 234 heads (1)-(3) ante) in addition to terminating the agreement, the required notices may be combined in a single document: see the Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983, SI 1983/1561, reg 2(8); and paras 234-235 ante. As to the giving of notice in default cases see para 263 post.

A contractual term that enables termination without reasonable notice may be an unfair term: see the Unfair Terms in Consumer Contracts Regulations 1994, SI 1994/3159, reg 4, Sch 3 paras 1(g), 2(a); and CONTRACT.

8 Consumer Credit Act 1974 s 98(2)(a).

9 Ie an act mentioned in ibid s 98(1).

10 Ibid s 98(2)(b).

11 Ibid s 98(2).

12 Ibid s 98(3). Any notice to be given by a creditor or owner in relation to a regulated agreement to a debtor or hirer under s 98(1) must contain (1) a statement that the notice is served under s 98(1); (2) the information set out in the Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983, SI 1983/1561, Sch 3 paras 1-5; and (3) statements in the form specified in Sch 3 paras 6-8: reg 2(3). As to further requirements relating to the notice see reg 2(4)-(8); and para 235 ante.

As to combined enforcement and termination notices see reg 2(8); note 7 supra; and paras 234-235 ante.

13 For the meaning of 'credit' see para 83 ante.

14 Consumer Credit Act 1974 s 98(4).

15 Ibid s 98(6). As to the provisions relating to default cases see para 263 post.

16 Ibid s 98(5). For the meaning of 'regulations' see para 114 note 2 ante. As to the regulations made see the text and note 19 infra.

17 For the meaning of 'non-commercial agreement' see para 107 ante.

18 For the meaning of 'security' see para 200 note 1 ante.

19 Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983, SI 1983/1561, reg 2(9).

UPDATE

251-268 Termination, Default and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

262 Duty to give notice to terminate in non-default cases

NOTE 8--SI 1994/3159 reg 4, Sch 3 paras 1(g), 2(a) now Unfair Terms in Consumer Contracts Regulations 1999, SI 1999/2083, reg 5(5), Sch 2 paras 1(g), 2(a).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/10. TERMINATION, DEFAULT AND ENFORCEMENT/(4) DEFAULT AND ENFORCEMENT/263. The need for a default notice.

(4) DEFAULT AND ENFORCEMENT

263. The need for a default notice.

Service of a notice¹ on the debtor² or hirer³ (a 'default notice') is necessary before the creditor⁴ or owner⁵ can become entitled by reason of any breach by the debtor or hirer of a regulated agreement⁶ (1) to terminate the agreement⁷; or (2) to demand earlier payment of any sum⁸; or (3) to recover possession of any goods⁹ or land¹⁰; or (4) to treat any right conferred on the debtor or hirer by the agreement as terminated, restricted or deferred¹¹; or (5) to enforce any security¹².

The requirement does not apply in the case of non-commercial agreements¹³ in relation to which no security has been provided¹⁴.

1 In accordance with the Consumer Credit Act 1974 s 88: see para 264 post. As to service of documents see para 314 post.

2 For the meaning of 'debtor' see para 81 note 3 ante.

3 For the meaning of 'hirer' see para 82 note 3 ante.

4 For the meaning of 'creditor' see para 81 note 2 ante.

5 For the meaning of 'owner' see para 82 note 1 ante.

6 For the meaning of 'regulated agreement' see para 79 ante.

7 Consumer Credit Act 1974 s 87(1)(a).

8 Ibid s 87(1)(b).

9 For the meaning of 'goods' see para 82 note 5 ante.

10 Consumer Credit Act 1974 s 87(1)(c). For the meaning of 'land' see para 93 note 2 ante.

11 Ibid s 87(1)(d). Section 87(1) does not prevent the creditor from treating the right to draw upon any credit as restricted or deferred, and taking such steps as may be necessary to make the restriction or deferral effective: s 87(2).

12 Ibid s 87(1)(e). The doing of an act by which a floating charge becomes fixed is not enforcement of a security: s 87(3). For the meaning of 'security' see para 200 note 1 ante. A mortgagee's claim for possession constitutes a demand for payment: see *Southern and District Finance plc v Barnes* [1995] CCLR 62.

Regulations may provide that the Consumer Credit Act 1974 s 87(1) is not to apply to agreements prescribed in the regulations: s 87(4). As to the regulations made see the text and note 14 infra.

As to notice in non-default cases see paras 234, 262 ante.

13 For the meaning of 'non-commercial agreement' see para 107 ante.

14 Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983, SI 1983/1561, reg 2(9). As to the power to make these regulations see the Consumer Credit Act 1974 s 87(4); and note 12 supra.

UPDATE

251-268 Termination, Default and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

263-268 Default and Enforcement

The OFT must prepare, and give general notice of, an arrears information sheet and a default information sheet: see Consumer Credit Act 1974 s 86A (added by Consumer Credit Act 2006 s 8).

Creditors and owners must give to debtors and hirers notices of sums in arrears in respect of regulated agreements that are fixed sum credit agreements or hire agreements: see Consumer Credit Act 1974 s 86B (added by Consumer Credit Act 2006 s 9; and amended by SI 2008/2826). A creditor must give to the debtor notices of sums in arrears in respect of regulated agreements that are running account agreements see Consumer Credit Act 1974 s 86C (added by Consumer Credit Act 2006 s 10; and amended by SI 2008/2826). As to the consequences for a creditor or owner if he fails to give a notice as required by the Consumer Credit Act 1974 s 86B or 86C see s 86D (added by Consumer Credit Act 2006 s 11).

A creditor or owner must give the debtor or hirer a notice in the specified form when a default sum becomes payable as a consequence of a breach of the agreement: see Consumer Credit Act 1974 s 86E (added by Consumer Credit Act 2006 s 12).

For regulations made under the Consumer Credit Act 1974 ss 86B, 86C and 86C see Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007, SI 2007/1167 (amended by SI 2008/1751, SI 2008/2826).

Where a default sum becomes payable under a regulated agreement by the debtor or hirer, the debtor or hirer will only be liable to pay interest in connection with the default sum if the interest is simple interest: Consumer Credit Act 1974 s 86F (added by Consumer Credit Act 2006 s 13). For transitional provision see Sch 3 paras 5-9.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/10. TERMINATION, DEFAULT AND ENFORCEMENT/(4) DEFAULT AND ENFORCEMENT/264. Form and content of a default notice.

264. Form and content of a default notice.

The default notice¹ must be in the prescribed form² and specify (1) the nature of the alleged breach³; (2) if the breach is capable of remedy, what action is required to remedy it and the date before which that action is to be taken⁴; (3) if the breach is not capable of remedy, the sum (if any) required to be paid as compensation for the breach, and the date before which it is to be paid⁵. A date so specified must not be less than seven days after the date of service of the default notice, and the creditor⁶ or owner⁷ must not take action⁸ before the date so specified or (if no requirement is made) before those seven days have elapsed⁹.

The default notice must not treat as a breach failure to comply with a provision of the agreement which becomes operative only on breach of some other provision, but if the breach of that other provision is not duly remedied or compensation demanded¹⁰ is not duly paid, or (where no requirement is made) if the seven days mentioned above have elapsed, the creditor or owner may treat the failure as a breach and act accordingly without the need for a further notice in respect of it¹¹. The default notice must contain information in the prescribed terms¹² about the consequences of failure to comply with it¹³.

If before the date specified for that purpose in the default notice the debtor¹⁴ or hirer¹⁵ either remedies the default or pays compensation for the breach as required¹⁶, the breach is to be treated as not having occurred¹⁷.

1 As to the need for a default notice see para 263 ante.

2 The default notice must contain (1) a statement that the notice is a default notice served under the Consumer Credit Act 1974 s 87(1) (see para 263 ante); (2) the information set out in the Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983, SI 1983/1561, Sch 2 paras 1-3, 6, 8; and (3) statements in the form specified in Sch 2 paras 4, 5 7, 9-11 (Sch 2 para 7 amended by SI 1984/1109): Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983, SI 1983/1561, reg 2(2). As to further requirements relating to the notice see reg 2(4)-(8); and para 235 ante.

3 Consumer Credit Act 1974 s 88(1)(a).

4 Ibid s 88(1)(b).

5 Ibid s 88(1)(c). A default notice making a requirement under s 88(1) may include a provision for the taking of action such as is mentioned in s 87(1) at any time after the restriction imposed by s 88(2) (see the text and note 9 infra) will cease, together with a statement that the provision will be ineffective if the breach is duly remedied or the compensation duly paid: s 88(5).

6 For the meaning of 'creditor' see para 81 note 2 ante.

7 For the meaning of 'owner' see para 82 note 1 ante.

8 Ie the action mentioned in the Consumer Credit Act 1974 s 87(1): see para 263 ante.

9 Ibid s 88(2).

10 Ie demanded under ibid s 88(1).

11 Ibid s 88(3).

12 For the prescribed terms see the Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983, SI 1983/1561, Sch 2 para 5.

- 13 Consumer Credit Act 1974 s 88(4).
- 14 For the meaning of 'debtor' see para 81 note 3 ante.
- 15 For the meaning of 'hirer' see para 82 note 3 ante.
- 16 Ie under the Consumer Credit Act 1974 s 88(1)(b) (see head (2) in the text) or s 88(1)(c) (see head (3) in the text).
- 17 Ibid s 89. Partial compliance is insufficient: see *Price v Romilly* [1960] 3 All ER 429, [1960] 1 WLR 1360 (failure by tenant to remedy breaches of terms of a tenancy agreement, under the Agricultural Holdings Act 1948 (now repealed)).

UPDATE

251-268 Termination, Default and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

263-268 Default and Enforcement

The OFT must prepare, and give general notice of, an arrears information sheet and a default information sheet: see Consumer Credit Act 1974 s 86A (added by Consumer Credit Act 2006 s 8).

Creditors and owners must give to debtors and hirers notices of sums in arrears in respect of regulated agreements that are fixed sum credit agreements or hire agreements: see Consumer Credit Act 1974 s 86B (added by Consumer Credit Act 2006 s 9; and amended by SI 2008/2826). A creditor must give to the debtor notices of sums in arrears in respect of regulated agreements that are running account agreements see Consumer Credit Act 1974 s 86C (added by Consumer Credit Act 2006 s 10; and amended by SI 2008/2826). As to the consequences for a creditor or owner if he fails to give a notice as required by the Consumer Credit Act 1974 s 86B or 86C see s 86D (added by Consumer Credit Act 2006 s 11).

A creditor or owner must give the debtor or hirer a notice in the specified form when a default sum becomes payable as a consequence of a breach of the agreement: see Consumer Credit Act 1974 s 86E (added by Consumer Credit Act 2006 s 12).

For regulations made under the Consumer Credit Act 1974 ss 86B, 86C and 86C see Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007, SI 2007/1167 (amended by SI 2008/1751, SI 2008/2826).

Where a default sum becomes payable under a regulated agreement by the debtor or hirer, the debtor or hirer will only be liable to pay interest in connection with the default sum if the interest is simple interest: Consumer Credit Act 1974 s 86F (added by Consumer Credit Act 2006 s 13). For transitional provision see Sch 3 paras 5-9.

264 Form and content of a default notice

NOTE 2--SI 1983/1561 Sch 2 paras 3, 6 amended: SI 2006/3094. SI 1983/1561 reg 2(2) amended, Sch 2 paras 8A, 9A, 10A added: SI 2007/1167.

NOTE 5--Where a default notice incorrectly states a sum which is less than that owed by the debtor, only that lesser sum may be recovered: *Woodchester Lease Management Services Ltd v Swain & Co (a firm)* [1999] 1 WLR 263, CA.

TEXT AND NOTES 6-11--References to 'seven days' are now to fourteen days: 1974 Act s 88(2), (3) (amended by Consumer Credit Act 2006 s 14(1)).

TEXT AND NOTES 12, 13--Refers also to failure to comply with any other prescribed matters relating to the agreement: 1974 Act s 88(4) (amended by the 2006 Act s 14(2)).

The default notice must also include a copy of the current default information sheet under the Consumer Credit Act 1974 s 86A: s 88(4A) (added by Consumer Credit Act 2006 s 14(3)).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/10. TERMINATION, DEFAULT AND ENFORCEMENT/(4) DEFAULT AND ENFORCEMENT/265. Recovery of protected goods under a regulated hire-purchase or conditional sale agreement.

265. Recovery of protected goods under a regulated hire-purchase or conditional sale agreement.

At any time when (1) the debtor¹ is in breach of a regulated² hire-purchase agreement³ or a regulated conditional sale agreement⁴ relating to goods⁵; and (2) the debtor has paid⁶ to the creditor⁷ one-third or more of the total price⁸ of the goods⁹; and (3) the property in the goods remains in the creditor, the creditor is not entitled to recover possession of the goods from the debtor except on an order of the court¹⁰. Goods to which this restriction applies are referred to as 'protected goods'¹¹.

Where the debtor is in breach but has not paid one-third or more of the total price to the creditor¹², but the same goods have been the subject of an earlier regulated hire-purchase or conditional sale agreement between the same parties, and in respect of that agreement one-third or more of the total price has been paid¹³, then, whether or not other goods are also included, the goods are nevertheless protected under the second as well as the earlier agreement¹⁴.

If the debtor has terminated, or terminates, the agreement the goods are not, or cease to be, protected¹⁵. On the debtor's death protection continues in relation to the then possessor of the goods until the grant of probate or letters of administration, upon which the personal representative falls to be treated as the debtor¹⁶.

If protected goods are recovered by the creditor without a court order¹⁷, the regulated agreement, if not previously terminated, terminates then¹⁸, and the debtor is released from all liability under the agreement, and is entitled to recover from the creditor all sums paid by the debtor under the agreement¹⁹. Where a regulated agreement is terminated under this provision²⁰, an interested party may apply for a declaration to that effect²¹.

1 For the meaning of 'debtor' see para 81 note 3 ante.

2 For the meaning of 'regulated' see para 79 ante.

3 For the meaning of 'hire-purchase agreement' see para 95 ante.

4 For the meaning of 'conditional sale agreement' see para 93 ante.

5 Consumer Credit Act 1974 s 90(1)(a). For the meaning of 'goods' see para 82 note 5 ante.

6 As to the meaning of 'payment' see para 84 note 5 ante.

7 For the meaning of 'creditor' see para 81 note 2 ante.

8 For the meaning of 'total price' see para 83 note 9 ante.

9 Consumer Credit Act 1974 s 90(1)(b). Where under a hire-purchase or conditional sale agreement the creditor is required to carry out any installation and the agreement specifies, as part of the total price, the amount to be paid in respect of the installation (the 'installation charge') the reference to one-third of the total price must be construed as a reference to the aggregate of the installation charge and one-third of the remainder of the total price: s 90(2). 'Installation' means (1) the installing of any electric line or any gas or water pipe; (2) the fixing of goods to the premises where they are to be used, and the alteration of premises to enable goods to be used on them; and (3) where it is reasonably necessary that goods should be constructed or erected on the premises where they are to be used, any work carried out for the purpose of constructing or erecting them on those premises: s 189(1). For the meaning of 'electric line' see the Electricity Act 1989 s 64(1); and FUEL AND ENERGY VOL 19(2) (2007 Reissue) para 1041.

In an action brought by the creditor to recover possession of goods comprised in an agreement to which the Consumer Credit Act 1974 s 90(1) applies, CCR Ord 9 has effect subject to specified modifications: see Ord 49 r 4(7).

10 Consumer Credit Act 1974 s 90(1)(c). For the meaning of 'court' see para 134 note 9 ante. See also *Chartered Trust plc v Pitcher* [1987] CCLR 71, [1988] RTR 72, CA (if the debtor consents to repossession, a court order is not required, but the debtor must have full knowledge of his legal rights).

11 Consumer Credit Act 1974 s 90(7).

12 Ibid s 90(1)(a), (b), (3)(a).

13 Ibid s 90(1)(b), (3)(b).

14 Ibid s 90(3). This also applies if the later agreement is a modifying agreement (see para 191 ante): s 90(4).

15 Ibid s 90(5).

16 Ibid s 90(6).

17 Ie in contravention of ibid s 90. Contravention of s 90 cannot be remedied: see *Capital Finance Co Ltd v Bray* [1964] 1 All ER 603, [1964] 1 WLR 323, CA.

18 Consumer Credit Act 1974 s 91(a).

19 Ibid s 91(b).

20 Ie under ibid s 91.

21 See ibid s 142(2)(b); and para 291 post.

UPDATE

251-268 Termination, Default and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

263-268 Default and Enforcement

The OFT must prepare, and give general notice of, an arrears information sheet and a default information sheet: see Consumer Credit Act 1974 s 86A (added by Consumer Credit Act 2006 s 8).

Creditors and owners must give to debtors and hirers notices of sums in arrears in respect of regulated agreements that are fixed sum credit agreements or hire agreements: see Consumer Credit Act 1974 s 86B (added by Consumer Credit Act 2006 s 9; and amended by SI 2008/2826). A creditor must give to the debtor notices of sums in arrears in respect of regulated agreements that are running account agreements see Consumer Credit Act 1974 s 86C (added by Consumer Credit Act 2006 s 10; and amended by SI 2008/2826). As to the consequences for a creditor or owner if he fails to give a notice as required by the Consumer Credit Act 1974 s 86B or 86C see s 86D (added by Consumer Credit Act 2006 s 11).

A creditor or owner must give the debtor or hirer a notice in the specified form when a default sum becomes payable as a consequence of a breach of the agreement: see Consumer Credit Act 1974 s 86E (added by Consumer Credit Act 2006 s 12).

For regulations made under the Consumer Credit Act 1974 ss 86B, 86C and 86C see Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007, SI 2007/1167 (amended by SI 2008/1751, SI 2008/2826).

Where a default sum becomes payable under a regulated agreement by the debtor or hirer, the debtor or hirer will only be liable to pay interest in connection with the default sum if the interest is simple interest: Consumer Credit Act 1974 s 86F (added by Consumer Credit Act 2006 s 13). For transitional provision see Sch 3 paras 5-9.

265 Recovery of protected goods under a regulated hire-purchase or conditional sale agreement

NOTE 9--CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/10. TERMINATION, DEFAULT AND ENFORCEMENT/(4) DEFAULT AND ENFORCEMENT/266. Recovery of possession of goods or land.

266. Recovery of possession of goods or land.

Except under an order of the court¹, the creditor² or owner³ is not entitled to enter any premises to take possession of goods⁴ subject to a regulated⁵ hire-purchase⁶, conditional sale⁷ or consumer hire agreement⁸. This restriction does not prevent any such entry with the debtor's consent given at the time⁹, although any clause in the agreement purporting to confer the right to enter and seize is void¹⁰.

At any time when the debtor is in breach of a regulated conditional sale agreement relating to land¹¹, the creditor is entitled to recover possession¹² of the land from the debtor, or any person claiming under him, on an order of the court only¹³.

An entry in contravention of the above requirements is actionable as a breach of statutory duty¹⁴.

- 1 For the meaning of 'court' see para 134 note 9 ante.
- 2 For the meaning of 'creditor' see para 81 note 2 ante.
- 3 For the meaning of 'owner' see para 82 note 1 ante.
- 4 For the meaning of 'goods' see para 82 note 5 ante.
- 5 For the meaning of 'regulated' see para 79 ante.
- 6 For the meaning of 'hire-purchase agreement' see para 95 ante.
- 7 For the meaning of 'conditional sale agreement' see para 93 ante.
- 8 Consumer Credit Act 1974 s 92(1). For the meaning of 'consumer hire agreement' see para 82 ante.
- 9 See *ibid* s 173(3); and para 199 post.
- 10 See *ibid* s 173(1); and para 199 post.
- 11 For the meaning of 'land' see para 93 note 2 ante.
- 12 Although the recovery of possession is usually by means of entry onto the land, and it is just such an entry which this provision penalises (see the text and note 14 infra), the receipt of rent and profits issuing out of land can also constitute possession (see the Law of Property Act 1925 s 205(1)(xix); and REAL PROPERTY) so that the obtaining of payment of such to the creditor may constitute recovery of possession, but no sanction is provided for such an eventuality (see note 14 infra).
- 13 Consumer Credit Act 1974 s 92(2).
- 14 *Ibid* s 92(3). No other sanction is provided or available: see s 170; and para 301 post.

UPDATE

251-268 Termination, Default and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements

mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

263-268 Default and Enforcement

The OFT must prepare, and give general notice of, an arrears information sheet and a default information sheet: see Consumer Credit Act 1974 s 86A (added by Consumer Credit Act 2006 s 8).

Creditors and owners must give to debtors and hirers notices of sums in arrears in respect of regulated agreements that are fixed sum credit agreements or hire agreements: see Consumer Credit Act 1974 s 86B (added by Consumer Credit Act 2006 s 9; and amended by SI 2008/2826). A creditor must give to the debtor notices of sums in arrears in respect of regulated agreements that are running account agreements see Consumer Credit Act 1974 s 86C (added by Consumer Credit Act 2006 s 10; and amended by SI 2008/2826). As to the consequences for a creditor or owner if he fails to give a notice as required by the Consumer Credit Act 1974 s 86B or 86C see s 86D (added by Consumer Credit Act 2006 s 11).

A creditor or owner must give the debtor or hirer a notice in the specified form when a default sum becomes payable as a consequence of a breach of the agreement: see Consumer Credit Act 1974 s 86E (added by Consumer Credit Act 2006 s 12).

For regulations made under the Consumer Credit Act 1974 ss 86B, 86C and 86C see Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007, SI 2007/1167 (amended by SI 2008/1751, SI 2008/2826).

Where a default sum becomes payable under a regulated agreement by the debtor or hirer, the debtor or hirer will only be liable to pay interest in connection with the default sum if the interest is simple interest: Consumer Credit Act 1974 s 86F (added by Consumer Credit Act 2006 s 13). For transitional provision see Sch 3 paras 5-9.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/10. TERMINATION, DEFAULT AND ENFORCEMENT/(4) DEFAULT AND ENFORCEMENT/267. Interest rate on default.

267. Interest rate on default.

The debtor¹ under a regulated consumer credit agreement² is not obliged to pay interest on sums which, in breach of the agreement, are unpaid by him at a rate (1) where the total charge for credit³ includes an item in respect of interest, exceeding the rate of that interest⁴; or (2) in any other case, exceeding what would be the rate of the total charge for credit if any items included in the total charge in respect of linked transactions⁵ were disregarded⁶.

- 1 For the meaning of 'debtor' see para 81 note 3 ante.
- 2 For the meaning of 'regulated' see para 79 ante; and for the meaning of 'consumer credit agreement' see para 81 ante.
- 3 As to the total charge for credit see paras 91, 224 et seq ante.
- 4 Consumer Credit Act 1974 s 93(a).
- 5 Ie by virtue of ibid s 20(2): see para 224 ante.
- 6 Ibid s 93(b).

UPDATE

251-268 Termination, Default and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

263-268 Default and Enforcement

The OFT must prepare, and give general notice of, an arrears information sheet and a default information sheet: see Consumer Credit Act 1974 s 86A (added by Consumer Credit Act 2006 s 8).

Creditors and owners must give to debtors and hirers notices of sums in arrears in respect of regulated agreements that are fixed sum credit agreements or hire agreements: see Consumer Credit Act 1974 s 86B (added by Consumer Credit Act 2006 s 9; and amended by SI 2008/2826). A creditor must give to the debtor notices of sums in arrears in respect of regulated agreements that are running account agreements see Consumer Credit Act 1974 s 86C (added by Consumer Credit Act 2006 s 10; and amended by SI 2008/2826). As to the consequences for a creditor or owner if he fails to give a notice as required by the Consumer Credit Act 1974 s 86B or 86C see s 86D (added by Consumer Credit Act 2006 s 11).

A creditor or owner must give the debtor or hirer a notice in the specified form when a default sum becomes payable as a consequence of a breach of the agreement: see Consumer Credit Act 1974 s 86E (added by Consumer Credit Act 2006 s 12).

For regulations made under the Consumer Credit Act 1974 ss 86B, 86C and 86C see Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007, SI 2007/1167 (amended by SI 2008/1751, SI 2008/2826).

Where a default sum becomes payable under a regulated agreement by the debtor or hirer, the debtor or hirer will only be liable to pay interest in connection with the default sum if the interest is simple interest: Consumer Credit Act 1974 s 86F (added by Consumer Credit Act 2006 s 13). For transitional provision see Sch 3 paras 5-9.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/10. TERMINATION, DEFAULT AND ENFORCEMENT/(4) DEFAULT AND ENFORCEMENT/268. Adverse retention.

268. Adverse retention.

Where goods¹ are comprised in a regulated² hire-purchase agreement³, regulated conditional sale agreement⁴ or regulated consumer hire agreement⁵, and the creditor⁶ or owner⁷ (1) brings an action or makes an application to enforce a right to recover possession of the goods from the debtor⁸ or hirer⁹; and (2) proves that a demand for the delivery of the goods was included in the default notice¹⁰, or that, after the right to recover possession of the goods accrued but before the action was begun or the application was made, he made a request in writing to the debtor or hirer to surrender them, then, for the purposes of the claim of the creditor or owner to recover possession of the goods, the possession of them by the debtor or hirer is deemed to be adverse to the creditor or owner¹¹.

- 1 For the meaning of 'goods' see para 82 note 5 ante.
- 2 For the meaning of 'regulated' see para 79 ante.
- 3 For the meaning of 'hire-purchase agreement' see para 95 ante.
- 4 For the meaning of 'conditional sale agreement' see para 93 ante.
- 5 For the meaning of 'consumer hire agreement' see para 82 ante.
- 6 For the meaning of 'creditor' see para 81 note 2 ante.
- 7 For the meaning of 'owner' see para 82 note 1 ante.
- 8 For the meaning of 'debtor' see para 81 note 3 ante.
- 9 For the meaning of 'hirer' see para 82 note 3 ante. For the purposes of these provisions, 'the debtor or hirer' includes a person in possession of the goods at any time between the debtor's or hirer's death and the grant of probate or administration: Consumer Credit Act 1974 s 103(2).
- 10 Ie under ibid s 88(5): see para 264 ante.
- 11 Ibid s 134(1). Nothing in these provisions affects a claim for damages for conversion: s 134(3). The tort of wrongful interference with goods includes the tort of conversion mentioned in s 134(3): see the Torts (Interference with Goods) Act 1977 s 1(a); and TORT.

UPDATE

251-268 Termination, Default and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

263-268 Default and Enforcement

The OFT must prepare, and give general notice of, an arrears information sheet and a default information sheet: see Consumer Credit Act 1974 s 86A (added by Consumer Credit Act 2006 s 8).

Creditors and owners must give to debtors and hirers notices of sums in arrears in respect of regulated agreements that are fixed sum credit agreements or hire agreements: see Consumer Credit Act 1974 s 86B (added by Consumer Credit Act 2006 s 9; and amended by SI 2008/2826). A creditor must give to the debtor notices of sums in arrears in respect of regulated agreements that are running account agreements see Consumer Credit Act 1974 s 86C (added by Consumer Credit Act 2006 s 10; and amended by SI 2008/2826). As to the consequences for a creditor or owner if he fails to give a notice as required by the Consumer Credit Act 1974 s 86B or 86C see s 86D (added by Consumer Credit Act 2006 s 11).

A creditor or owner must give the debtor or hirer a notice in the specified form when a default sum becomes payable as a consequence of a breach of the agreement: see Consumer Credit Act 1974 s 86E (added by Consumer Credit Act 2006 s 12).

For regulations made under the Consumer Credit Act 1974 ss 86B, 86C and 86C see Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007, SI 2007/1167 (amended by SI 2008/1751, SI 2008/2826).

Where a default sum becomes payable under a regulated agreement by the debtor or hirer, the debtor or hirer will only be liable to pay interest in connection with the default sum if the interest is simple interest: Consumer Credit Act 1974 s 86F (added by Consumer Credit Act 2006 s 13). For transitional provision see Sch 3 paras 5-9.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/11. EXTORTIONATE CREDIT BARGAINS/269. Nature of extortionate credit bargains.

11. EXTORTIONATE CREDIT BARGAINS

269. Nature of extortionate credit bargains.

If the court¹ finds a credit bargain² extortionate it may reopen the credit agreement³ so as to do justice between the parties⁴. A credit bargain is extortionate if it (1) requires the debtor⁵ or a relative⁶ of his to make payments (whether unconditionally, or on certain contingencies) which are grossly exorbitant⁷; or (2) otherwise grossly contravenes ordinary principles of fair dealing⁸. In determining whether a credit bargain is extortionate, regard must be had to such evidence as is adduced concerning (a) interest rates prevailing at the time it was made⁹; (b) various other specified factors¹⁰; and (c) any other relevant considerations¹¹.

The specified factors in relation to the debtor include (i) his age, experience, business capacity and state of health¹²; and (ii) the degree to which, at the time of making the credit bargain, he was under financial pressure, and the nature of that pressure¹³. The specified factors in relation to the creditor include (A) the degree of risk accepted by him, having regard to the value of any security provided¹⁴; (B) his relationship to the debtor¹⁵; and (C) whether or not a colourable cash price was quoted for any goods or services included in the credit bargain¹⁶. In relation to a linked transaction¹⁷, the specified factors include the question how far the transaction was reasonably required for the protection of debtor or creditor, or was in the interest of the debtor¹⁸.

These provisions relating to extortionate credit bargains apply whether the agreement is regulated¹⁹ or exempt²⁰ and whatever the amount of credit²¹, provided that the debtor is an individual²².

1 For the meaning of 'court' see para 134 note 9 ante.

2 'Credit bargain', in the context of the provisions as to extortionate credit bargains (ie the Consumer Credit Act 1974 ss 137-140 (s 139 as amended)), means (1) where no transaction other than the credit agreement is to be taken into account in computing the total charge for credit, the credit agreement; or (2) where one or more other transactions are to be so taken into account, the credit agreement and those other transactions, taken together: s 137(2)(b). As to the total charge for credit see paras 91, 224 et seq ante. For the meaning of 'credit' see para 83 ante.

3 'Credit agreement', in the context of the provisions as to extortionate credit bargains (ie ibid ss 137-140 (s 139 as amended)), means any agreement between an individual (the 'debtor') and any other person (the 'creditor') by which the creditor provides the debtor with credit of any amount: s 137(2)(a). For the meaning of 'individual' see para 80 note 1 ante. For the meaning of 'debtor' generally see para 81 note 3 ante; and for the meaning of 'creditor' generally see para 81 note 2 ante. Cf the meaning of 'personal credit agreement' in para 80 ante. It will be seen that the definition of 'credit agreement' is not limited in any way to regulated agreements or by any reference to the amounts involved in the transaction. The only limiting factor is the requirement that the debtor be an individual; this is in keeping with the general policy of consumer protection which underlies the whole legislative framework of the Consumer Credit Act 1974. For the meaning of 'regulated agreement' see para 79 ante.

4 Ibid s 137(1). See *Davies v Directloans Ltd*[1986] 2 All ER 783, [1986] 1 WLR 823 (the Consumer Credit Act 1974 s 138(1) contains a comprehensive definition of 'extortionate' for the purposes of the Act and it is neither necessary nor permissible to look outside the Act at earlier authorities in order to ascertain its meaning).

The courts may intervene if a bargain is unconscionable: see eg *Multiservice Bookbinding Ltd v Marden*[1979] Ch 84, [1978] 2 All ER 489; *Nationwide Building Society v Registry of Friendly Societies*[1983] 3 All ER 296, [1983] 1 WLR 1226. See also EQUITY vol 16(2) (Reissue) para 429 et seq; MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) para 854 et seq.

5 Where a credit agreement is not a regulated agreement, expressions which normally apply only in the context of such agreements must be construed as nearly as may be as if the credit agreement were a regulated agreement: see the Consumer Credit Act 1974 s 140.

6 For the meaning of 'relative' see para 116 note 12 ante.

7 Consumer Credit Act 1974 s 138(1)(a). A comparable provision in respect of excessive interest was contained in the Moneylenders Act 1900 s 1 (repealed) (see para 7 ante). The following cases were decided under that Act: *Blair v Buckworth* (1908) 24 TLR 474 at 476, CA, per Lord Alverstone CJ ('the rate of interest might in certain circumstances be of itself a fallacious test'); *Reading Trust Ltd v Spero, Spero v Reading Trust Ltd*[1930] 1 KB 492, CA (80% interest on loan to businessman for highly speculative and very profitable business not excessive); *Kruse v Seeley*[1924] 1 Ch 136 (a rate which is not excessive for a loan on personal security only may be excessive as ample security; 82.5% found excessive); *Tattersall v Mason and Wood Ltd*(1956) Times, 3 March (a rate of 70% where no security was provided and the loan was to pay off loans to other firms not excessive). See also *Michaelson v Nichols* (1910) 26 TLR 327 (where interest at the rate of 60% was allowed); *Carringtons Ltd v Smith*[1906] 1 KB 79 (30%); *Oakes v Green* (1907) 23 TLR 560 (40%); *Saunders v Newbold*[1905] 1 Ch 260, CA (10%); *Wolfe v Batters* (1909) 25 TLR 575 (25%); *King v Barnett* (1908) 25 TLR 52 (60%); *Jackson v Price*[1910] 1 KB 143 (50%); *Levene v Gardner and Earl of Kilmorey* (1909) 25 TLR 711 (20%); *L Fortescue Ltd v Bradshaw* (1911) 27 TLR 251 (50%); *Wheatley v Part* (1911) 27 TLR 303 (30%); *Halsey v Wolfe*[1915] 2 Ch 330 (15%); *Wolfe v Lowther* (1915) 31 TLR 354 (30%); *Jacobs Bros v Joycey* (1919) 35 TLR 362 (100%); *Jennings v Seeley* (1924) 40 TLR 97 (15%); *Temperance Loan Fund v Erwood* (1927) 137 LT 449, DC (50%). The reasoning in *Blair v Buckworth* supra seems to have caused the omission of any statutory maximum rate of interest from the Consumer Credit Act 1974: see *Reform of the Law on Consumer Credit* (Cmnd 5427) (1973). All the cases after the Moneylenders Act 1927 (repealed) must be read in the light of the statutory presumption that interest over 48% was excessive: see eg *Lancashire Loans Ltd v Black*[1934] 1 KB 380, CA (40%); *Collings v Charles Bradbury Ltd*[1936] 3 All ER 369 (81%, reduced to 25%).

8 Consumer Credit Act 1974 s 138(1)(b). See also *A Ketley Ltd v Scott* [1980] CCLR 37; *Wills v Wood* [1984] CCLR 7, CA; *Davies v Directloans Ltd*[1986] 2 All ER 783, [1986] 1 WLR 823; *Coldunell Ltd v Gallon*[1986] QB 1184, [1986] 1 All ER 429, CA; *Woodstead Finance Ltd v Petrou* [1986] CCLR 107, [1986] NLJ Rep 188.

The expression used in the comparable provision of the Moneylenders Act 1900 s 1 (repealed), is 'where the transaction is harsh and unconscionable or is otherwise such that a court of equity would give relief'. For transactions found harsh and unconscionable see eg *Halsey v Wolfe*[1915] 2 Ch 330 (failure of borrower to understand the transaction); *Bonnard v Dott* (1905) 92 LT 822 (on appeal [1906] 1 Ch 740, CA); *Part v Bond* (1906) 94 LT 390, CA; *Blair v Buckworth* (1908) 24 TLR 474, CA (taking advantage of borrower's necessity); *Lewis v Mills* (1914) 30 TLR 438 (improperly tempting a borrower); *Lancashire Loans Ltd v Black*[1934] 1 KB 380, CA (no independent advice to a daughter guaranteeing her mother's loan, and undue influence of mother known to moneylender). Reference may also be made to the general equitable principles as to when relief would be given in equity from an unconscionable bargain: see EQUITY vol 16(2) (Reissue) para 429. See also the jurisdiction exercised in the case of mortgages: *Kreglinger v New Patagonia Meat and Cold Storage Co Ltd*[1914] AC 25 at 61, HL, per Lord Parker; *Cityland and Property (Holdings) Ltd v Dabrah*[1968] Ch 166, [1967] 2 All ER 639.

9 Consumer Credit Act 1974 s 138(2)(a).

10 Ie those mentioned in ibid s 138(3)-(5) (see the text and notes 12-18 infra): s 138(2)(b).

11 Ibid s 138(2)(c).

12 Ibid s 138(3)(a).

13 Ibid s 138(3)(b).

14 Ibid s 138(4)(a). For the meaning of 'security' see para 200 note 1 ante.

15 Ibid s 138(4)(b).

16 Ibid s 138(4)(c). The reference to 'colourable cash price' seems aimed at the attempted disguising of the real extent of credit charges by an inflation of the cash price shown in the agreement. For the meaning of 'goods' see para 82 note 5 ante.

17 As to linked transactions see paras 90, 196-198 ante.

18 Consumer Credit Act 1974 s 138(5).

19 Generally the provisions of the Consumer Credit Act 1974 apply only to regulated agreements, but the provisions relating to extortionate credit bargains are an exception. See also note 3 supra.

- 20 As to exempt agreements see para 99 et seq ante.
- 21 As to the monetary limit which usually applies see para 81 ante.
- 22 See the Consumer Credit Act 1974 s 137(2)(a); and note 3 supra.

UPDATE

269-270 Extortionate Credit Bargains

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

269 Nature of extortionate credit bargains

TEXT AND NOTES--1974 Act ss 137-140 repealed: Consumer Credit Act 2006 s 22(3). See now Consumer Credit Act 1974 ss 140A-140D; and PARA 109.

NOTE 9--Subsequent changes in rates of interest are irrelevant, the definition of credit bargain in the 1974 Act s 137(2)(b) (see NOTE 2) excluding variations in interest rates during the mortgage term: *Paragon Finance plc v Nash*; *Paragon Finance plc v Staunton*[2001] EWCA Civ 1466, [2001] 2 All ER 248, [2002] 1 WLR 685; *Paragon Finance plc v Pender*[2005] EWCA Civ 760, [2005] 1 WLR 3412.

NOTE 11--The way a discretionary variation of interest rate clause operates in fact is not relevant: *Broadwick Financial Services Ltd v Spencer*[2002] EWCA Civ 35, [2002] 1 All ER (Comm) 446 (lender's failure to inform borrower of policy of operating clause in certain way could, however, be relevant).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/11. EXTORTIONATE CREDIT BARGAINS/270. Reopening extortionate credit bargains.

270. Reopening extortionate credit bargains.

A credit agreement¹ may, if the court² thinks just, be reopened³ on the ground that the credit bargain⁴ is extortionate⁵ (1) on an application for the purpose made by the debtor⁶ or any surety⁷ to the High Court or county court⁸; or (2) at the instance of the debtor or a surety in any proceedings to which the debtor and creditor⁹ are parties, being proceedings to enforce the agreement, any security¹⁰ relating to it, or any linked transaction¹¹; or (3) at the instance of the debtor or a surety in other proceedings in any court where the amount paid or payable under the credit agreement is relevant¹².

In reopening the agreement, the court may, for the purpose of relieving the debtor or a surety from payment of any sum in excess of that fairly due and reasonable, by order (a) direct accounts to be taken between any persons¹³; (b) set aside the whole or part of any obligation imposed on the debtor or surety by the credit bargain or any related agreement¹⁴; (c) require the creditor to repay the whole or part of any sum paid under the credit bargain or any related agreement by the debtor or a surety, whether paid to the creditor or any other person¹⁵; (d) direct the return to the surety of any property provided for the purposes of the security¹⁶; or (e) alter the terms of the credit agreement or any security instrument¹⁷.

1 For the meaning of 'credit agreement' see para 81 ante.

2 For the meaning of 'court' see para 134 note 9 ante.

3 As to the limitation period within which an agreement may be reopened see *First National Bank plc v Ann & Ann* [1998] CCLR 1; *First National Securities Ltd v Bertrand* [1980] CCLR 5; *Davies v Directloans Ltd* [1986] 2 All ER 783, [1986] 1 WLR 823; *Homestead Finance Ltd v Warriner and Tasker* [1997] 9 CL 138; *Ricketts and Ricketts v Hurstanger Ltd* [1998] CCLR 5.

4 For the meaning of 'credit bargain' see para 269 note 1 ante.

5 As to what amounts to an extortionate credit bargain see para 269 ante.

6 For the meaning of 'debtor' see para 81 note 3 ante. As to the applicability of the terminology of the Consumer Credit Act 1974 to non-regulated agreements see para 269 note 3 ante.

7 For the meaning of 'surety' see para 200 note 6 ante.

8 Consumer Credit Act 1974 s 139(1)(a). An application under s 139(1)(a) must be brought only in the county court in the case of (1) a regulated agreement (see para 79 ante) (s 139(5)(a)); or (2) an agreement (not being a regulated agreement) under which the creditor provides the debtor with fixed-sum credit (see para 85 ante) or running-account credit (see para 84 ante) (s 139(5)(b)) (amended by the High Courts and County Courts Jurisdiction Order 1991, SI 1991/724, art 2(1), (8), Schedule Pt I)). An application to a county court under the Consumer Credit Act 1974 s 139(1)(a) for a credit agreement to be reopened must be made by originating application: CCR Ord 49 r 4(14). The court may even open a closed transaction, although it might be less ready to do this than to vary one which is still in operation. For some of the factors held relevant to the opening of a concluded transaction under the provisions of the Moneylenders Act 1900 (repealed) see *Kerman v Wainewright* (1916) 32 TLR 295, CA, per Pickford LJ (a closed transaction may be opened in the absence of fraud or pressure, but such an absence is a factor to be considered); *Wolfe v Lowther* (1915) 31 TLR 354; *BS Lyle Ltd v Pearson* [1941] 2 KB 391, [1941] 3 All ER 128, CA.

9 For the meaning of 'creditor' see para 81 note 2 ante.

10 For the meaning of 'security' see para 200 note 1 ante.

11 Consumer Credit Act 1974 s 139(1)(b). See also *First National Bank plc v Syed* [1991] 2 All ER 250, [1991] CCLR 37, CA. As to linked transactions see paras 90, 196-198 ante.

12 Consumer Credit Act 1974 s 139(1)(c). Where in any proceedings in a county court under s 139(1)(b) or s 139(1)(c), the debtor or a surety desires to have a credit agreement reopened, he must, within 14 days after the service of the originating process on him, give notice to that effect to the proper officer and to every other party to the proceedings and thereafter the debtor or surety, as the case may be, must be treated as having delivered a defence or answer and accordingly, if the proceedings are a default action, no judgment must be entered under CCR Ord 9 r 6(1): Ord 49 r 4(15).

13 Consumer Credit Act 1974 s 139(2)(a).

14 Ibid s 139(2)(b).

15 Ibid s 139(2)(c).

16 Ibid s 139(2)(d).

17 Ibid s 139(2)(e). An order may be made under s 139(2) notwithstanding that its effect is to place a burden on the creditor in respect of an advantage unfairly enjoyed by another person who is a party to a linked transaction: s 139(3). Such an order does not alter the effect of any judgment: s 139(4). For the meaning of 'security instrument' see para 200 ante.

UPDATE

269-270 Extortionate Credit Bargains

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

270 Reopening of extortionate credit bargains

TEXT AND NOTES--Consumer Credit Act 1974 s 139 repealed: Consumer Credit Act 2006 Sch 4. See now Consumer Credit Act 1974 ss 140A-140D; and PARA 109.

NOTE 3--The 12-year limitation period under the Limitation Act 1980 s 8 (see LIMITATION PERIODS vol 68 (2008) PARA 953) applies to a claim to reopen a credit agreement under the 1974 Act s 139 since an action on a specialty includes an action on a statute: *Rahman v Sterling Credit Ltd* [2001] 1 WLR 496, CA.

NOTES 8, 12--CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/12. ANCILLARY CREDIT BUSINESS/(1) TYPES OF ANCILLARY CREDIT BUSINESS/271. What constitutes ancillary credit business.

12. ANCILLARY CREDIT BUSINESS

(1) TYPES OF ANCILLARY CREDIT BUSINESS

271. What constitutes ancillary credit business.

An ancillary credit business is any business so far as it comprises or relates to one or more of five specified activities¹. These activities are (1) credit brokerage²; (2) debt-adjusting³; (3) debt-counselling⁴; (4) debt-collecting⁵; and (5) the operation of a credit reference agency⁶.

1 See the Consumer Credit Act 1974 ss 145(1), 189(1). As to the application of the licensing provisions to ancillary credit business see s 147(1); and para 276 post. For the meaning of 'credit' see para 83 ante.

2 Ibid s 145(1)(a). See para 272 post.

3 Ibid s 145(1)(b). See para 273 post.

4 Ibid s 145(1)(c). See para 273 post.

5 Ibid s 145(1)(d). See para 273 post.

6 Ibid s 145(1)(e). See para 274 post.

UPDATE

271-287 Ancillary Credit Business

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

271 What constitutes ancillary credit business

TEXT AND NOTES--Consumer Credit Act 1974 s 145(1) amended to add references to debt administration and to the provision of credit information services: s 145(1)(da), (db) (added by Consumer Credit Act 2006 ss 24(1), 25(1)).

See also Consumer Credit Act 1974 s 145(7B)-(7D) (added by Consumer Credit Act 2006 s 25(2)).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/12. ANCILLARY CREDIT BUSINESS/(1) TYPES OF ANCILLARY CREDIT BUSINESS/272. Credit brokerage.

272. Credit brokerage.

Credit brokerage is the effecting of introductions of individuals¹ desiring to obtain credit², or to obtain goods on hire³, to certain persons⁴.

In the case of credit, those persons are anyone carrying on a business⁵ which is (1) a consumer credit business⁶; (2) a business which comprises or relates to consumer credit agreements which are exempt agreements⁷; or (3) a business which comprises or relates to unregulated agreements where (a) the law applicable to the agreement is the law of a country outside the United Kingdom⁸; and (b) if the law applicable to the agreement were the law of a part of the United Kingdom it would be a regulated consumer credit agreement⁹. Where an individual desires to obtain credit to finance¹⁰ the acquisition or provision of a dwelling occupied or to be occupied by himself or his relative¹¹, the relevant person is any person carrying on a business in the course of which he provides credit secured on land¹².

In the case of obtaining goods on hire, the relevant persons are persons carrying on (i) a consumer hire business¹³; or (ii) a business comprising or relating to unregulated agreements where (A) the law applicable to the agreement is the law of a country outside the United Kingdom¹⁴; and (B) if the law applicable to the agreement were the law of a part of the United Kingdom it would be a regulated consumer hire agreement¹⁵.

In either case, the effecting of introductions of individuals wishing to obtain credit or goods on hire to another credit-broker is itself credit brokerage¹⁶.

An exception to these provisions is made in the case of introductions effected by an individual canvassing regulated consumer hire agreements and certain credit agreements¹⁷ off trade premises¹⁸, as long as the introductions are not effected by the canvasser in the capacity of an employee¹⁹, and he does not effect, by other means, introductions which fall within the credit brokerage provisions²⁰.

1 For the meaning of 'individual' see para 80 note 1 ante. As to the meaning of 'introductions' see *Brookes v Retail Credit Cards Ltd* [1986] CCLR 5, [1986] Crim LR 327, DC.

2 See the Consumer Credit Act 1974 s 145(2)(a), (c). For the meaning of 'credit' see para 83 ante.

3 See ibid s 145(2)(b). For the meaning of 'goods' see para 82 note 5 ante.

4 See ibid s 145(2). As to credit brokerage see also *Brookes v Retail Credit Cards Ltd* [1986] CCLR 5, [1986] Crim LR 327, DC.

5 For the meaning of 'business' see para 81 note 7 ante.

6 Consumer Credit Act 1974 s 145(2)(a)(i), (3)(a). For the meaning of 'consumer credit business' see para 81 ante.

7 Ie all exempt agreements except those which are exempt by virtue of the number of payments to be made by the debtor under them not exceeding a specified number (see ibid s 16(5)(a); and para 101 head (1) ante): s 145(2)(a)(i), (3)(b). For the meaning of 'consumer credit agreement' see para 81 ante; and for the meaning of 'debtor' see para 81 note 3 ante.

8 Ibid s 145(2)(a)(i), (3)(c)(i) (amended by the Contracts (Applicable Law) Act 1990 s 5, Sch 4 para 2). For the meaning of 'United Kingdom' see para 70 note 4 ante.

9 Consumer Credit Act 1974 s 145(2)(a)(i), (3)(c)(ii) (amended by the Contracts (Applicable Law) Act 1990 Sch 4 para 2). For the meaning of 'unregulated' and 'regulated' see para 79 ante.

- 10 For the meaning of 'finance' see para 83 note 8 ante.
- 11 For the meaning of 'relative' see para 116 note 12 ante.
- 12 Consumer Credit Act 1974 s 145(2)(a)(ii). For the meaning of 'land' see para 93 note 2 ante. For the meaning of 'security' see para 200 note 1 ante.
- 13 Ibid s 145(2)(b), (4)(a). For the meaning of 'consumer hire business' see para 82 ante.
- 14 Ibid s 145(2)(b), (4)(b)(i) (amended by the Contracts (Applicable Law) Act 1990 Sch 4 para 2).
- 15 Consumer Credit Act 1974 s 145(2)(b), (4)(b)(ii) (amended by the Contracts (Applicable Law) Act 1990 Sch 4 para 2). For the meaning of 'consumer hire agreement' see para 82 ante.
- 16 Consumer Credit Act 1974 s 145(2)(c). For the meaning of 'credit-broker' see para 94 ante.
- 17 ie debtor-creditor-supplier agreements to finance a transaction between the debtor and the creditor: ibid s 146(5). For the meaning of 'debtor-creditor-supplier agreement' see para 87 ante.
- 18 As to canvassing off trade premises see para 151 et seq ante, 281 post.
- 19 Consumer Credit Act 1974 s 146(5)(a).
- 20 Ibid s 146(5)(b).

UPDATE

271-287 Ancillary Credit Business

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

272 Credit brokerage

NOTES 2-16--1974 Act s 145(2) amended: Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 1) Order 2003, SI 2003/1475.

TEXT AND NOTES 13-15--1974 Act s 145(4) further amended: Consumer Credit Act 2006 s 5(4).

TEXT AND NOTES 17-20--It is not credit brokerage for a person to effect the introduction of an individual desiring to obtain credit if the introduction is made (1) to an authorised person (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 314), within the meaning of the Financial Services and Markets Act 2000, who has permission under the 2000 Act to enter as lender into an agreement which is secured by a land mortgage, where entering into that agreement as lender is a regulated activity for the purposes of the 2000 Act; or (2) to a qualifying broker (ie a person who may effect such introductions without contravening the general prohibition, within the meaning of s 19 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 80)), with a view to that individual obtaining credit under a such an agreement: 1974 Act s 146(5A), (5D) (added by SI 2003/1475; 1974 Act s 146(5A) amended by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2006, SI 2006/2383; 1974 Act s 146(5D) amended by SI 2005/2967, SI 2006/2383).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/12. ANCILLARY CREDIT BUSINESS/(1) TYPES OF ANCILLARY CREDIT BUSINESS/273. Debt-counselling, debt-adjusting and debt-collecting.

273. Debt-counselling, debt-adjusting and debt-collecting.

'Debt-counselling' is the giving of advice to debtors¹ or hirers² about the liquidation of debts due under consumer credit agreements or consumer hire agreements³.

'Debt-adjusting' is the carrying out of certain activities concerned with the repayment of such a debt⁴. These activities are (1) negotiating with the creditor⁵ or owner⁶, on behalf of the debtor or hirer, terms for the discharge of the debt⁷; (2) taking over, in return for payments by the debtor or hirer, his obligations to discharge a debt⁸; and (3) any similar activity concerned with the liquidation of a debt⁹. These two definitions are not mutually exclusive, and in practice debt-counselling will frequently be a preliminary to some form of debt-adjusting by the counsellor.

'Debt-collecting' is the taking of steps to procure payment of debts due under consumer credit agreements or consumer hire agreements¹⁰.

It is not debt-adjusting, debt-counselling or debt-collecting for a person to do anything in relation to a debt arising under an agreement if:

- 138 (a) he is the creditor or owner under the agreement, otherwise than by virtue of an assignment¹¹; or
- 139 (b) he is the creditor or owner under the agreement by virtue of an assignment made in connection with the transfer to the assignee of any business other than a debt-collecting business¹²; or
- 140 (c) he is the supplier¹³ in relation to the agreement¹⁴; or
- 141 (d) he is a credit-broker¹⁵ who has acquired the business of the person who was the supplier in relation to the agreement¹⁶; or
- 142 (e) he is a person who is the agent of a creditor-supplier¹⁷ where the agreement was made in consequence of canvassing off trade premises by that or another similar agent¹⁸.

1 For the meaning of 'debtor' see para 81 note 3 ante.

2 For the meaning of 'hirer' see para 82 note 3 ante.

3 Consumer Credit Act 1974 ss 145(6), 189(1). See also the text and notes 11-18 infra. For the meaning of 'consumer credit agreement' see para 81 ante; and for the meaning of 'consumer hire agreement' see para 82 ante. This definition, as is the case with the others in this paragraph, is framed in terms only of consumer agreements and not in terms of regulated agreements. For the meaning of 'regulated agreement' see para 79 ante.

4 See ibid ss 145(5), 189(1). See also note 3 supra; and the text and notes 11-18 infra.

5 For the meaning of 'creditor' see para 81 note 2 ante.

6 For the meaning of 'owner' see para 82 note 1 ante.

7 Consumer Credit Act 1974 s 145(5)(a).

8 Ibid s 145(5)(b).

9 Ibid s 145(5)(c).

10 See ibid ss 145(7), 189(1). See also note 3 supra; and the text and notes 11-18 infra.

- 11 Ibid s 146(6)(a).
- 12 Ibid s 146(6)(b).
- 13 For the meaning of 'supplier' see para 86 note 8 ante.
- 14 Consumer Credit Act 1974 s 146(6)(c).
- 15 For the meaning of 'credit-broker' see para 94 ante.
- 16 Consumer Credit Act 1974 s 146(6)(d).
- 17 Ie the agreement in question will be a debtor-creditor-supplier agreement for restricted-use credit to finance a transaction between the debtor and creditor. For the meaning of 'debtor-creditor-supplier agreement' see para 87 ante; and for the meaning of 'restricted-use credit agreement' see para 86 ante.
- 18 See the Consumer Credit Act 1974 s 146(6)(e). As to canvassing off trade premises see para 151 et seq ante, 281 post. As to the exemption of such an agent from the provisions relating to credit brokerage see para 272 ante. As to agency generally see paras 176-178 ante; and AGENCY.

UPDATE

271-287 Ancillary Credit Business

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

273 Debt-counselling, debt-adjusting and debt-collecting

NOTES 3-10--1974 Act s 145(5), (6) amended: Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 1) Order 2003, SI 2003/1475.

NOTE 10--Debt administration, subject to the 1974 Act s 146(7), is the taking of steps to perform duties under a consumer credit agreement or a consumer hire agreement on behalf of the creditor or owner; or to exercise or to enforce rights under such an agreement on behalf of the creditor or owner so far as the taking of such steps is not debt-collecting: 1974 Act s 146(7A) (added by the 2006 Act s 24(2)).

TEXT AND NOTES 11-18--1974 Act s 146(6) amended: Consumer Credit Act 2006 s 24(3).

It is not debt-adjusting for a person to carry on an activity mentioned in the 1974 Act s 145(5)(a), (b) or (c) if the debt in question is due under a consumer credit agreement which is secured by a land mortgage, where entering into that agreement as lender is a regulated activity for the purposes of the Financial Services and Markets Act 2000, and that activity is a regulated activity for the purposes of the 2000 Act: 1974 Act s 146(5B), (5D) (added by SI 2003/1475).

It is not debt-counselling for a person to give advice to debtors about the liquidation of debts if the debt in question is due under a consumer credit agreement which is secured by a land mortgage, where entering into that agreement as lender is a regulated activity for the purposes of the 2000 Act, and giving that advice is a regulated activity for the purposes of the 2000 Act: 1974 Act s 146(5C), (5D) (added by SI 2003/1475).

It is not debt administration for a person to take steps to perform duties, or to exercise or enforce rights, under an agreement on behalf of the creditor or owner if any of the conditions mentioned in the 1974 Act s 146(6)(aa)-(e) is satisfied in relation to that person: 1974 Act s 146(7) (added by the Consumer Protection Act 2006 s 24(4)).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/12. ANCILLARY CREDIT BUSINESS/(1) TYPES OF ANCILLARY CREDIT BUSINESS/274. Credit reference agency.

274. Credit reference agency.

'Credit reference agency' means a person carrying on a business¹ comprising the furnishing of information relevant to the financial standing of individuals², being information collected by the agency for that purpose³.

1 For the meaning of 'business' see para 81 note 7 ante.

2 Thus, if the business is solely concerned with the financial standing of bodies corporate it is not a credit reference agency for the purposes of the Consumer Credit Act 1974. For the meaning of 'individual' see para 80 note 1 ante.

3 Ibid s 145(8). This is an important limiting factor to the breadth of this definition. For special provisions relating to such agencies see further para 284 et seq post. As to agency generally see paras 176-178 ante; and AGENCY.

UPDATE

271-287 Ancillary Credit Business

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/12. ANCILLARY CREDIT BUSINESS/(1) TYPES OF ANCILLARY CREDIT BUSINESS/275. Exemptions.

275. Exemptions.

A barrister or advocate acting in that capacity is not to be treated as doing so in the course of any ancillary credit business¹. Similarly, a solicitor engaging in contentious business² is not to be treated as doing so in the course of any ancillary credit business³.

1 Consumer Credit Act 1974 s 146(1). As to what constitutes ancillary credit business see para 271 ante.

2 For the meaning of 'contentious business' see the Solicitors Act 1974 s 87(1); and LEGAL PROFESSIONS vol 66 (2009) PARA 933.

3 Consumer Credit Act 1974 s 146(2) (amended by the Arbitration Act 1996 s 107(1), Sch 3 para 28(2)). The provisions of the Consumer Credit Act 1974 s 146(2) are applied, with modification, in relation to a recognised body under the Administration of Justice Act 1985 s 9 (as amended): see the Solicitors' Incorporated Practices Order 1991, SI 1991/2684, arts 4, 5, Sch 1; and LEGAL PROFESSIONS vol 65 (2008) PARA 688 et seq.

UPDATE

271-287 Ancillary Credit Business

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

275 Exemptions

TEXT AND NOTES--An authorised person (other than a barrister or solicitor) engaging in contentious business is not to be treated as doing so in the course of any ancillary credit business: Consumer Credit Act 1974 s 146(2A) (added by Legal Services Act 2007 Sch 21 para 31). In this context, 'authorised person' means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act (see LEGAL PROFESSIONS vol 65 (2008) PARA 512); and 'contentious business' means business done in or for the purposes of proceedings begun before a court or before an arbitrator, not being non-contentious or common form probate business (within the meaning of the Supreme Court Act 1981 s 128) (see LEGAL PROFESSIONS vol 66 (2009) PARA 933): Consumer Credit Act 1974 s 146(2B) (added by Legal Services Act 2007 Sch 21 para 31).

NOTE 3--SI 1991/2684 renamed the Solicitors' Recognised Bodies Order 1991: SI 2009/500. See also SI 1991/2684 arts 2, 3 (art 3 amended by SI 2009/500).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/12. ANCILLARY CREDIT BUSINESS/ (2) LICENSING/276. Application of licensing provisions.

(2) LICENSING

276. Application of licensing provisions.

Provisions concerning the licensing of credit and hire business¹ apply to an ancillary credit business² as they apply to a consumer credit business³.

1 Ie the Consumer Credit Act 1974 Pt III (ss 21-41), except s 40; the Consumer Credit (Period of Standard Licence) Regulations 1975, SI 1975/2124 (as amended); the Consumer Credit (Conduct of Business) (Credit References) Regulations 1977, SI 1977/330 (as amended); and the Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837: see para 121 et seq ante.

2 As to what constitutes ancillary credit business see para 271 ante.

3 Consumer Credit Act 1974 s 147(1). For the meaning of 'consumer credit business' see para 81 ante. Section 147(1) does not prevent a European institution from carrying on in the United Kingdom any listed activity which it is authorised or permitted to carry on in its home state, except where there is in force a prohibition under the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 18 (see para 126 ante): reg 5(1)(c), (2)(c) (modified by SI 1995/3275). For the meaning of 'European institution' see para 122 note 6 ante; for the meaning of 'listed activity' see para 121 note 4 ante; and for the meaning of 'home state' for these purposes see para 121 note 4 ante. Further, the Consumer Credit Act 1974 s 147(1) does not prevent a European investment firm from providing in the United Kingdom any listed service which it is authorised to provide in its home state, except where there is in force a prohibition under the Investment Services Regulations 1995, SI 1995/3275, reg 15 (see para 126): reg 5(1)(b), (2)(b). For the meaning of 'European investment firm' see para 122 note 6 ante; for the meaning of 'listed service' see para 122 note 6 ante; and for the meaning of 'home state' for these purposes see para 121 note 4 ante. For the meaning of 'United Kingdom' see para 70 note 4 ante.

UPDATE

271-287 Ancillary Credit Business

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

276 Application of licensing provisions

NOTE 1--SI 1977/330 further amended: SI 2000/291. SI 1975/2124 revoked: SI 2007/1167.

TEXT AND NOTE 3--Consumer Credit Act 1974 s 147(1) repealed: Consumer Credit Act 2006 Sch 4.

NOTE 3--As a consequence of the coming into force of the Financial Services and Markets Act 2000, SI 1992/3218 and SI 1995/3275 are revoked: SI 2001/3649.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/12. ANCILLARY CREDIT BUSINESS/ (2) LICENSING/277. Agreements for services of unlicensed trader.

277. Agreements for services of unlicensed trader.

An agreement for the services of a person carrying on an ancillary credit business¹ (the 'trader'), if made when the trader was unlicensed², is enforceable against the other party (the 'customer') only where the Director General of Fair Trading³, on the application of the trader or his successor in title, has made an order⁴ applying to the agreement that it be treated as if made when the trader was licensed⁵.

Unless the director determines to make such an order in accordance with the application, he must, before determining the application, by notice⁶ (1) inform the trader, giving his reasons, that, as the case may be, he is minded to refuse the application, or to grant it in terms different from those applied for, describing them; and (2) invite the trader to submit to the director representations⁷ in support of his application⁸. In determining whether or not to make an order in respect of any period the director must consider, in addition to any other relevant factors, (a) how far, if at all, customers under agreements made by the trader during that period were prejudiced by the trader's conduct⁹; (b) whether or not the director would have been likely to grant a licence covering that period on an application by the trader¹⁰; and (c) the degree of culpability for the failure to obtain a licence¹¹.

If the director thinks fit, he may in an order (i) limit the order to specified agreements, or agreements of a specified description or made at a specified time¹²; (ii) make the order conditional on the doing of specified acts by the trader¹³.

1 As to what constitutes ancillary credit business see para 271 ante.

2 As to the licensing requirements for persons carrying on consumer credit or consumer hire businesses see para 121 et seq ante.

3 As to the Director General of Fair Trading see para 110 ante.

4 Ie an order under the Consumer Credit Act 1974 s 148(2).

5 Ibid s 148(1), (2). 'An agreement for the services of a person carrying on an ancillary credit business made when that person was unlicensed' does not include (1) such an agreement made when that person was a relevant institution within the meaning of the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 61(4) (see reg 61(2)); and (2) such an agreement made when that person was a relevant firm (see the Investment Services Regulations 1995, SI 1995/3275, reg 38(2), (4)). Applications for an order under the Consumer Credit Act 1974 s 148(2) must be made in Form CC6B/93: General Notice 47. As to the fees payable in respect of such applications see General Notice 35. The Consumer Credit Act 1974 s 148(1) does not apply to certain agreements made before 3 August 1976 or 1 July 1978: see Sch 3 para 45.

A person aggrieved by the refusal of an order under s 148(2) may appeal to the Secretary of State: see s 150. As to appeals see para 135 et seq ante. As to the Secretary of State see para 113 ante.

6 For the meaning of 'notice' see para 128 note 3 ante.

7 Ie in accordance with the Consumer Credit Act 1974 s 34: see para 112 ante.

8 Ibid s 148(3).

9 Ibid s 148(4)(a).

10 Ibid s 148(4)(b).

11 Ibid s 148(4)(c).

12 Ibid s 148(5)(a).

13 Ibid s 148(5)(b).

UPDATE

271-287 Ancillary Credit Business

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

277 Agreements for services of unlicensed trader

TEXT AND NOTES--Consumer Credit Act 1974 s 148 amended: Enterprise Act 2002 Sch 25 para 6(28).

See further Consumer Credit Act 1974 s 148(6) (added by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649).

NOTE 5--As a consequence of the coming into force of the Financial Services and Markets Act 2000, SI 1992/3218 and SI 1995/3275 are revoked: SI 2001/3649.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/12. ANCILLARY CREDIT BUSINESS/ (2) LICENSING/278. Regulated agreements made on introductions by an unlicensed credit-broker.

278. Regulated agreements made on introductions by an unlicensed credit-broker.

A regulated agreement¹ made by a debtor or hirer² who, for the purpose of making that agreement, was introduced to the creditor or owner³ by an unlicensed credit-broker⁴ is enforceable against the debtor or hirer only where (1) on the application of the credit-broker, the Director General of Fair Trading⁵ has made an order⁶ in respect of a period including the time when the introduction was made, and the order does not (whether in general terms or specifically) exclude the application of this provision⁷ to the regulated agreement⁸; or (2) the director has made an order as set out below⁹ which applies to the agreement¹⁰.

Where during any period individuals¹¹ were introduced to a person carrying on a consumer credit business or consumer hire business¹² by an unlicensed credit-broker for the purpose of making regulated agreements with the person carrying on that business, that person or his successor in title may apply to the director for an order that regulated agreements so made are to be treated as if the credit-broker had been licensed at the time of the introduction¹³. Unless the director determines to make an order in accordance with the application, he must, before determining the application, by notice¹⁴ (a) inform the applicant, giving his reasons, that, as the case may be, he is minded to refuse the application, or to grant it in terms different from those applied for, describing them¹⁵; and (b) invite the applicant to submit to the director representations¹⁶ in support of his application¹⁷. In determining whether or not to make an order the director must consider, in addition to any other relevant factors (i) how far, if at all, debtors or hirers under regulated agreements to which the application relates were prejudiced by the credit-broker's conduct¹⁸; and (ii) the degree of culpability of the applicant in facilitating the carrying on by the credit-broker of his business when unlicensed¹⁹. If the director thinks fit, he may in an order (A) limit the order to specified agreements, or agreements of a specified description or made at a specified time²⁰; (B) make the order conditional on the doing of specified acts by the applicant²¹.

1 For the meaning of 'regulated agreement' see para 79 ante.

2 For the meaning of 'debtor' see para 81 note 3 ante; and for the meaning of 'hirer' see para 82 note 3 ante.

3 For the meaning of 'creditor' see para 81 note 2 ante; and for the meaning of 'owner' see para 82 note 1 ante.

4 For the meaning of 'credit-broker' see para 94 ante. 'Introductions by an unlicensed credit-broker' do not include (1) introductions by a credit-broker who is a relevant institution within the meaning of the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 61(4) (see reg 61(3)); and (2) introductions by a credit-broker who is a relevant firm (see the Investment Services Regulations 1995, SI 1995/3275, reg 38(3), (4)).

5 As to the Director General of Fair Trading see para 110 ante.

6 Ie an order under the Consumer Credit Act 1974 s 148(2): see para 277 ante.

7 Ie ibid s 149(1).

8 Ibid s 149(1)(a).

9 Ie an order under ibid s 149(2): see the text and note 13 infra.

10 Ibid s 149(1)(b). Section 149 does not apply to certain agreements made before 1 July 1978 or 19 May 1985: see Sch 3 para 46.

11 For the meaning of 'individual' see para 80 note 1 ante.

12 For the meaning of 'consumer credit business' see para 81 ante; and for the meaning of 'consumer hire business' see para 82 ante.

13 Consumer Credit Act 1974 s 149(2). A person aggrieved by the refusal of an order under s 149(2) may appeal to the Secretary of State: see s 150; and the Consumer Credit Licensing (Appeals) Regulations 1976, SI 1976/837. As to appeals see para 135 et seq ante. Applications for an order under the Consumer Credit Act 1974 s 149(2) must be made in Form CC7/91: General Notice 41. As to the fees payable in respect of such applications see General Notice 35. As to the Secretary of State see para 113 ante.

14 For the meaning of 'notice' see para 128 note 3 ante.

15 Consumer Credit Act 1974 s 149(3)(a).

16 In accordance with ibid s 34: see para 112 ante.

17 Ibid s 149(3)(b).

18 Ibid s 149(4)(a).

19 Ibid s 149(4)(b).

20 Ibid s 149(5)(a).

21 Ibid s 149(5)(b).

UPDATE

271-287 Ancillary Credit Business

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

278 Regulated agreements made on introductions by an unlicensed credit-broker

TEXT AND NOTES--Consumer Credit Act 1974 s 149 amended: Enterprise Act 2002 Sch 25 para 6(29); SI 2001/3649).

NOTE 4--SI 1992/3218, SI 1995/3275 revoked: SI 2001/3649.

NOTE 13--Consumer Credit Act 1974 s 150 repealed: Consumer Credit Act 2006 Sch 4.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/12. ANCILLARY CREDIT BUSINESS/(3) SEEKING BUSINESS/279. Advertisements.

(3) SEEKING BUSINESS

279. Advertisements.

Statutory provisions in relation to advertisements¹ also apply to advertisements published for the purposes of a business of credit brokerage² carried on by any person, whether it advertises the services of that person or the services of persons to whom he effects introductions³.

Statutory provisions⁴ also apply to an advertisement, published for the purposes of a business⁵ carried on by the advertiser⁶, indicating that he is willing to advise on debts, or engage in transactions concerned with the liquidation of debts⁷.

The Secretary of State may by order exclude from the operation of these provisions an advertisement published for the purposes of a business of credit brokerage, debt-adjusting or debt-counselling⁸ if it is of a description specified in the order⁹.

1 Ie the Consumer Credit Act 1974 ss 44, 45, 46, 47: see paras 145, 150 ante. See also the Consumer Credit (Advertisements) Regulations 1989, SI 1989/1125 (as modified); and para 146 et seq ante. For the meaning of 'advertisement' see para 144 text and note 7 ante.

2 As to credit brokerage see para 272 ante. In this context 'credit brokerage' includes the effecting of introductions of individuals desiring to obtain credit to any person carrying on a business in the course of which he provides credit secured on land: Consumer Credit Act 1974 s 151(5).

3 Ibid s 151(1). See also *R v Munford and Ahearne* [1995] CCLR 16, CA.

4 Ie the Consumer Credit Act 1974 ss 44, 46, 47: see paras 145, 150 ante.

5 For the meaning of 'business' see para 81 note 7 ante.

6 For the meaning of 'advertiser' see para 144 text and note 8 ante.

7 Consumer Credit Act 1974 s 151(2). An advertisement does not fall within s 151(2) if it indicates that the advertiser is not willing to act in relation to consumer credit agreements and consumer hire agreements: s 151(4). For the meaning of 'consumer credit agreement' see para 81 ante; and for the meaning of 'consumer hire agreement' see para 82 ante.

8 For the meaning of 'debt-adjusting' and 'debt-counselling' see para 273 ante.

9 Consumer Credit Act 1974 s 151(3). At the date at which this volume states the law no such order had been made.

UPDATE

271-287 Ancillary Credit Business

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

279 Advertisements

TEXT AND NOTES--Consumer Credit Act 1974 s 151 further amended: Consumer Credit Act 2006 s 25(3); SI 2001/544.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/12. ANCILLARY CREDIT BUSINESS/(3) SEEKING BUSINESS/280. Application of general power to make regulations.

280. Application of general power to make regulations.

The Secretary of State's general power to make regulations¹ as to the conduct by a licensee of his business² and to make regulations as to the giving of quotations³ and information⁴ apply to a business of credit brokerage⁵, debt-adjusting or debt-counselling⁶ as they apply to a consumer credit business⁷.

In the case of credit brokerage the provisions as to the giving of quotations and specified information apply to the giving of quotations and information about the business of any person to whom the credit-broker effects introductions as well as to the giving of quotations and information about his own business⁸. A contravention of any regulations made under any of these powers is an offence⁹.

- 1 As to the Secretary of State see para 113 ante. As to the making of regulations see para 114 ante.
- 2 Ie under the Consumer Credit Act 1974 s 54: see para 124 ante.
- 3 Ie under *ibid* s 52: see para 155 ante. At the date at which this volume states the law no regulations relating to quotations were in force: see para 155 ante. For the meaning of 'quotation' see para 155 ante.
- 4 Ie under *ibid* s 53: see para 156 ante.
- 5 As to credit brokerage see para 272 ante.
- 6 For the meaning of 'debt-adjusting' and 'debt-counselling' see para 273 ante.
- 7 See the Consumer Credit Act 1974 s 152(1). For the meaning of 'consumer credit business' see para 81 ante.
- 8 *Ibid* s 152(2). For the meaning of 'business' see para 81 note 7 ante.
- 9 *Ibid* s 167(2). An offence under s 167(2) is punishable on summary conviction by a fine not exceeding the prescribed sum and on conviction on indictment by a maximum of two years' imprisonment or a fine or both: s 167(1), Sch 1 (amended by virtue of the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see para 120 note 15 ante.

UPDATE

271-287 Ancillary Credit Business

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

280 Application of general power to make regulations

TEXT AND NOTE 7--Consumer Credit Act 1974 s 152(1) amended: Consumer Credit Act 2006 s 25(4)(a).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/12. ANCILLARY CREDIT BUSINESS/(3) SEEKING BUSINESS/281. Prohibition of canvassing certain ancillary credit services off trade premises.

281. Prohibition of canvassing certain ancillary credit services off trade premises.

It is an offence to canvass off trade premises the services of a person carrying on a business¹ of credit brokerage², debt-adjusting or debt-counselling³. An individual⁴ (the 'canvasser') canvasses off trade premises the services of a person carrying on an ancillary credit business⁵ if he solicits the entry of another individual (the 'consumer') into an agreement for the provision to the consumer of those services by making oral representations⁶ to the consumer, or any other individual, during a visit by the canvasser to any place, other than an excluded place⁷, where the consumer, or that other individual, as the case may be, is, being a visit carried out for the purpose of making such oral representations to individuals who are at that place⁸ but not carried out in response to a request made on a previous occasion⁹.

1 For the meaning of 'business' see para 81 note 7 ante.

2 As to credit brokerage see para 272 ante.

3 Consumer Credit Act 1974 s 154. For the meaning of 'debt-adjusting' and 'debt-counselling' see para 273 ante.

4 For the meaning of 'individual' see para 80 note 1 ante.

5 As to what constitutes ancillary credit business see para 271 ante.

6 For the meaning of 'representation' see para 112 note 2 ante.

7 A place is excluded from this provision if it is a place where (whether on a permanent or temporary basis) (1) the ancillary credit business is carried on (Consumer Credit Act 1974 s 153(2)(a)); or (2) any business is carried on by the canvasser or the person whose employee or agent the canvasser is, or by the consumer (s 153(2)(b)).

8 Ibid s 153(1)(a).

9 Ibid s 153(1)(b).

UPDATE

271-287 Ancillary Credit Business

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

281 Prohibition of canvassing certain ancillary credit services off trade premises

TEXT AND NOTE 3--Consumer Credit Act 1974 s 154 amended: Consumer Credit Act 2006 s 25(4)(b).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/12. ANCILLARY CREDIT BUSINESS/(3) SEEKING BUSINESS/282. Right to recover brokerage fees.

282. Right to recover brokerage fees.

In the case of individuals¹ desiring to enter into certain categories of agreements special provision is made to enable the excess over £5² of a fee or commission³ charged by a credit-broker for his services to cease to be payable or, as the case may be, to become recoverable if the introduction does not result in his entering into a relevant agreement within the six months following the introduction⁴.

This provision applies to an individual who sought an introduction for a purpose which would have been fulfilled by his entry into (1) a regulated agreement⁵; or (2) a credit agreement which would have been regulated but for its being exempt by reason of the body with which it was made⁶; or (3) a credit or hire agreement which would have been regulated but for the proper law of the agreement being that of some country outside the United Kingdom⁷; or (4) a credit agreement to provide a dwelling for himself or a relative⁸, being an agreement secured on land⁹.

1 For the meaning of 'individual' see para 80 note 1 ante.

2 Consumer Credit Act 1974 s 155(1) (amended by the Consumer Credit (Further Increase of Monetary Amounts) Order 1998, SI 1998/997, art 3, Schedule).

3 In the case of an individual desiring to obtain credit under a consumer credit agreement, any sum payable or paid by him to a credit-broker otherwise than as a fee or commission for the credit-broker's services must be treated as such a fee or commission if it enters, or would enter, into the total charge for credit: Consumer Credit Act 1974 s 155(4). For the meaning of 'consumer credit agreement' see para 81 ante. For the meaning of 'credit-broker' see para 94 ante. As to the total charge for credit see paras 91, 224 et seq ante.

4 See ibid s 155(1) (as amended: see note 2 supra). For these purposes an agreement which is cancelled under s 69(1) (see para 185 ante) or is cancelled in part only owing to its nature under s 69(2) (see para 185 ante) must be disregarded: s 155(1) (as so amended).

5 Ibid s 155(2)(a). For the meaning of 'regulated agreement' see para 79 ante.

6 Ibid s 155(2)(c). See s 145(3)(b); and para 272 ante.

7 Ibid s 155(2)(c). See s 145(3)(c), (4)(b); and para 272 ante. For the meaning of 'United Kingdom' see para 70 note 4 ante.

8 For the meaning of 'relative' see para 116 note 12 ante.

9 Consumer Credit Act 1974 s 155(2)(b). See s 145(2)(a)(ii); and para 272 ante.

UPDATE

271-287 Ancillary Credit Business

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

282 Right to recover brokerage fees

TEXT AND NOTES--The 1974 Act s 155(1) does not apply where the fee or commission relates to the effecting of an introduction of a kind mentioned in s 146(5A) (see PARA 272), and the person charging that fee or commission is an authorised person or an appointed representative, within the meaning of the Financial Services and Markets Act 2000 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARAS 314, 346): 1974 Act s 155(2A) (added by SI 2003/1475).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/12. ANCILLARY CREDIT BUSINESS/(4) ENTRY INTO AGREEMENTS/283. Entry into agreements.

(4) ENTRY INTO AGREEMENTS

283. Entry into agreements.

Although the provisions relating to the entry into regulated consumer credit agreements¹ do not apply to agreements made in the course of an ancillary credit business², regulations³ may make similar provision in relation to credit brokerage, debt-adjusting and debt-counselling⁴.

The provisions which may be made are those relating to the disclosure of information⁵, the form and content of agreements⁶, the signature of agreements⁷, and the provision of copies of agreements⁸. Regulations may also prevent an improperly executed agreement from being enforced without a court order⁹, and they may prescribe factors for the court to take into account¹⁰. Regulations may also relate to the form and content of secondary documents and of copies¹¹.

1 For the meaning of 'regulated' see para 79 ante; and for the meaning of 'consumer credit agreement' see para 81 ante.

2 As to what constitutes ancillary credit business see para 271 ante.

3 At the date at which this volume states the law no such regulations had been made. For the meaning of 'regulations' see para 114 note 2 ante.

4 See the Consumer Credit Act 1974 s 156. As to credit brokerage see para 272 ante. For the meaning of 'debt-adjusting' and 'debt-counselling' see para 273 ante.

5 See *ibid* s 55; and para 158 ante.

6 See *ibid* s 60; and para 161 ante.

7 See *ibid* s 61; and para 160 ante.

8 See *ibid* ss 62-63; and paras 171-172 ante.

9 See *ibid* s 75; and para 250 ante.

10 See *ibid* s 127; and paras 169 ante, 290 post.

11 See *ibid* ss 179, 180; and paras 115-116 ante.

UPDATE

271-287 Ancillary Credit Business

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

283 Entry into agreements

TEXT AND NOTE 4--Consumer Credit Act 1974 s 156 amended: Consumer Credit Act 2006
s 25(4)(c).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/12. ANCILLARY CREDIT BUSINESS/(5) CREDIT REFERENCE AGENCY/284. Duty to disclose particulars of agency.

(5) CREDIT REFERENCE AGENCY

284. Duty to disclose particulars of agency.

A creditor¹, owner² or negotiator³, within the prescribed period⁴ after receiving a request in writing to that effect from the debtor or hirer⁵, must give him notice⁶ of the name and address of any credit reference agency⁷ from which the creditor, owner or negotiator has, during the antecedent negotiations⁸, applied for information about his financial standing⁹.

This provision does not apply to a request received more than 28 days after the termination of the antecedent negotiations, whether on the making of the regulated agreement¹⁰ or otherwise¹¹. If the creditor, owner or negotiator fails to comply with the provision he commits an offence¹². Similar provisions, although not reinforced by criminal sanctions¹³, apply to credit-brokers¹⁴.

Where a creditor or owner is not willing to make a regulated agreement¹⁵ but, instead of informing the debtor or hirer of this directly, he informs a credit-broker, he must, not later than the time when he informs the credit-broker that he is not willing to make the agreement, also inform him of the name and address of any credit reference agency from which he has sought information about the financial standing of the debtor or hirer¹⁶. If the credit-broker subsequently responds to a request for information from the debtor or hirer¹⁷, he must also give him notice of the name and address of any agency of which he has been informed by the creditor or owner under these provisions¹⁸.

1 For the meaning of 'creditor' see para 81 note 2 ante.

2 For the meaning of 'owner' see para 82 note 1 ante.

3 For the meaning of 'negotiator' see para 177 ante.

4 Ie seven working days: see the Consumer Credit (Credit Reference Agency) Regulations 1977, SI 1977/329, reg 3(a). For the meaning of 'working day' see para 120 note 5 ante.

5 For the meaning of 'debtor' see para 81 note 3 ante; and for the meaning of 'hirer' see para 82 note 3 ante.

6 For the meaning of 'notice' see para 128 note 3 ante.

7 For the meaning of 'credit reference agency' see para 274 ante.

8 For the meaning of 'antecedent negotiations' see para 177 ante.

9 Consumer Credit Act 1974 s 157(1).

10 For the meaning of 'regulated agreement' see para 79 ante.

11 Consumer Credit Act 1974 s 157(2). Although these provisions are not expressly limited to regulated agreements, the effect of the definition of antecedent negotiations in terms of such agreements only seems to have the effect of so limiting them.

12 Ibid s 157(3). The offence is punishable on summary conviction by a fine not exceeding level 4 on the standard scale: s 167(1), Sch 1 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see para 202 note 19 ante.

13 No sanction is provided in the regulations, nor is any provided generally in respect of the enabling provisions. See further para 301 post.

14 For the meaning of 'credit-broker' see para 94 ante. Credit-brokers will frequently also be negotiators in relation to any agreement and so will fall within the ambit of the provisions anyway. Credit-brokers who are not negotiators have similar provisions applied to them by the Consumer Credit (Conduct of Business) (Credit References) Regulations 1977, SI 1977/330, reg 4. As to credit brokerage see para 272 ante.

15 For the meaning of 'regulated agreement' see para 79 ante.

16 Consumer Credit (Conduct of Business) (Credit References) Regulations 1977, SI 1977/330, reg 2.

17 ie a request made in pursuance of the Consumer Credit Act 1974 s 157(1).

18 Consumer Credit (Conduct of Business) (Credit References) Regulations 1977, SI 1977/330, reg 3 (credit-brokers who are also negotiators), reg 4(b) (credit-brokers who are not negotiators). No sanction is provided for default: see note 13 supra.

UPDATE

271-287 Ancillary Credit Business

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

284 Duty to disclose particulars of agency

NOTE 4--SI 1977/329 reg 3(a) now Consumer Credit (Credit Reference Agency) Regulations 2000, SI 2000/290, reg 3.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/12. ANCILLARY CREDIT BUSINESS/(5) CREDIT REFERENCE AGENCY/285. Duty of agency to disclose filed information.

285. Duty of agency to disclose filed information.

A credit reference agency¹, within seven working days² after receiving (1) a request in writing to that effect from any individual³ (the 'consumer'); and (2) such particulars as the agency may reasonably require to enable them to identify the file⁴; and (3) a fee of £2, must give the consumer a copy of the file relating to him kept by the agency⁵.

If the agency does not keep a file relating to the consumer it must give him notice⁶ of that fact, but need not return any money paid⁷. If the agency contravenes any of the above provisions it commits an offence⁸.

1 For the meaning of 'credit reference agency' see para 274 ante.

2 Consumer Credit (Credit Reference Agency) Regulations 1977, SI 1977/329, reg 3(b). For the meaning of 'working day' see para 120 note 5 ante.

3 For the meaning of 'individual' see para 80 note 1 ante.

4 'File', in relation to an individual, means all the information about him kept by a credit reference agency, regardless of how the information is stored and 'copy of the file', as respects information not in plain English, means a transcript reduced into plain English: Consumer Credit Act 1974 s 158(5).

5 Ibid s 158(1) (amended by the Consumer Credit (Further Increase of Monetary Amounts) Order 1998, SI 1998/997, art 3, Schedule). When giving a copy of the file under the Consumer Credit Act 1974 s 158(1) (as so amended), the agency must also give the consumer a statement in the prescribed form of his rights under s 159 (correction of wrong information; see para 286 post): s 158(2). For the meaning of 'prescribed' see para 114 note 8 ante. As to the meaning of 'copy' see para 174 text and note 4 ante. The statement of the consumer's rights under s 159 is contained in the Consumer Credit (Credit Reference Agency) Regulations 1977, SI 1977/329, reg 2, Sch 1.

6 For the meaning of 'notice' see para 128 note 3 ante.

7 Consumer Credit Act 1974 s 158(3).

8 Ibid s 158(4). The offence is punishable on summary conviction by a fine not exceeding level 4 on the standard scale: s 167(1), Sch 1 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see para 202 note 19 ante.

UPDATE

271-287 Ancillary Credit Business

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

285 Duty of agency to disclose filed information

NOTE 2--SI 1977/329 reg 3(b) now Consumer Credit (Credit Reference Agency) Regulations 2000, SI 2000/290, reg 3.

TEXT AND NOTE 3--For 'individual' read 'partnership or other unincorporated body of persons not consisting entirely of bodies corporate': Data Protection Act 1998 s 62(1).

TEXT AND NOTE 5--1974 Act s 158(1) further amended: 1998 Act s 62(1); Consumer Credit Act 2006 s 5(5). See further 1974 Act s 158(4A) (added by Consumer Credit Act 2006 s 5(6)).

NOTE 5--In 1974 Act s 158(2) for 'his' read 'the consumer's': 1998 Act s 62(1). SI 1977/329 reg 2, Sch 1 now Consumer Credit (Credit Reference Agency) Regulations 2000, SI 2000/290, reg 4, Schs 1-3.

TEXT AND NOTE 7--In 1974 Act s 158(3) for 'him' read 'the consumer': 1998 Act s 62(1).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/12. ANCILLARY CREDIT BUSINESS/(5) CREDIT REFERENCE AGENCY/286. Correction of wrong information.

286. Correction of wrong information.

A consumer given information by a credit reference agency¹ who considers that an entry in his file² is incorrect, and that if it is not corrected he is likely to be prejudiced, may give notice³ to the agency requiring it either to remove the entry from the file or amend it⁴. Within 28 days after receiving a notice, the agency must by notice inform the consumer that it has (1) removed the entry from the file⁵; or (2) amended the entry⁶; or (3) taken no action⁷.

Within 28 days after receiving notice from the agency⁸, the consumer may, unless he has been informed by the agency that it has removed the entry from his file, serve a further notice on the agency requiring it to add to the file an accompanying notice of correction (not exceeding 200 words) drawn up by the consumer and include a copy of it when furnishing information included in or based on that entry⁹.

Within a further 28 days the agency, unless it intends to apply to the Director General of Fair Trading¹⁰, must by notice inform the consumer that it has received the notice of correction and intends to comply with it¹¹. If (a) the consumer has not received such a notice within the time required¹²; or (b) it appears to the agency that it would be improper for it to publish a notice of correction because it is incorrect, or unjustly defames any person, or is frivolous or scandalous, or is for any other reason unsuitable¹³, the consumer or, as the case may be, the agency may, in the prescribed manner¹⁴ and on payment of the specified fee¹⁵, apply to the director, who may make such order on the application as he thinks fit¹⁶.

If a person to whom an order under the above provisions is directed fails to comply with it within the period specified in the order he commits an offence¹⁷.

Within 10 working days¹⁸ after (i) the agency giving notice¹⁹ that it has removed an entry from the file kept by it about a consumer or has amended the entry; (ii) the agency giving notice²⁰ that it has received a notice²¹ requiring it to add a notice of correction to the file and intends to comply with the notice; or (iii) the expiration of the period specified in an order of the director²² as that within which it is to be complied with, the agency must give notice of specified particulars²³ to each person to whom at any time since the date six months immediately preceding the receipt by it of the request, particulars and fee²⁴, it furnished information relevant to the financial standing of the consumer concerned²⁵.

1 Ie under the Consumer Credit Act 1974 s 158: see para 285 ante. For the meaning of 'credit reference agency' see para 274 ante.

2 For the meaning of 'file' see para 285 note 4 ante.

3 For the meaning of 'notice' see para 128 note 3 ante.

4 Consumer Credit Act 1974 s 159(1).

5 Ibid s 159(2)(a).

6 Ibid s 159(2)(b).

7 Ibid s 159(2)(c). If the notice states that the agency has amended the entry it must include a copy of the file so far as it comprises the amended entry: s 159(2). For the meaning of 'copy of the file' see para 285 note 4 ante.

8 Where no notice is received from the agency within 28 days from the consumer's first notice, then the period for service of his second notice is 28 days from the expiry of 28 days from his first notice: ibid s 159(3).

- 9 Ibid s 159(3). As to the meaning of 'copy' see para 174 text and note 4 ante.
- 10 As to the Director General of Fair Trading see para 110 ante.
- 11 Consumer Credit Act 1974 s 159(4).
- 12 Ibid s 159(5)(a).
- 13 Ibid s 159(5)(b).
- 14 Application may be made to the director in accordance with the following provisions (1) by a consumer who has not received a notice under ibid s 159(4) within the time thereby required; and (2) by an agency to which it appears that it would be improper because of any reason referred to in s 159(5)(b) to publish a notice of correction which is required by a consumer to be added to its file about him: Consumer Credit (Credit Reference Agency) Regulations 1977, SI 1977/329, reg 4(1). Any application under the Consumer Credit Act 1974 s 159(5) must state the name and address of the agency and of the consumer and must give an indication of when the notice of correction under s 159(3) was given by the consumer to the agency: Consumer Credit (Credit Reference Agency) Regulations 1977, SI 1977/329, reg 4(2). An application under the Consumer Credit Act 1974 s 159(5) by a consumer must give particulars of the entry in the file or of the information received by him from the agency and must state why he considers the entry or information to be incorrect and why, if it is not corrected, he considers that he is likely to be prejudiced: Consumer Credit (Credit Reference Agency) Regulations 1977, SI 1977/329, reg 4(3). An application under the Consumer Credit Act 1974 s 159(5) by an agency must be accompanied by (a) a copy of the file given by the agency to the consumer or, as the case may be, of the information included in or based on entries in the file given under s 160(3) (see para 287 post) by the agency to a consumer who carries on a business; (b) a copy of the notice of correction; and (c) a copy of related correspondence and other documents which have passed between the agency and the consumer, and must state the grounds upon which it appears to the agency that it would be improper for it to publish the notice of correction: Consumer Credit (Credit Reference Agency) Regulations 1977, SI 1977/329, reg 4(4).
- 15 As to the specified fee see para 110 note 17 ante.
- 16 Consumer Credit Act 1974 s 159(5). Applications for an order under s 159(5) by a consumer must be in writing accompanied by the name and address of the consumer and of the credit reference agency, particulars of the entry in the file or of the information received by the consumer from the agency, and a statement of why the consumer considers the entry or information to be incorrect and why, if it is not correct, he considers that he is likely to be prejudiced: General Notice 11. Applications for an order under the Consumer Credit Act 1974 s 159(5) by a credit reference agency must be made in Form CC314/77 and accompanied by the particulars required by that form: General Notice 12.
- 17 Consumer Credit Act 1974 s 159(6). The offence is punishable on summary conviction by a fine not exceeding level 4 on the standard scale: s 167(1), Sch 1 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see para 202 note 19 ante.
- 18 For the meaning of 'working day' see para 120 note 5 ante.
- 19 Ie under the Consumer Credit Act 1974 s 159(2).
- 20 Ie under ibid s 159(4).
- 21 Ie under ibid s 159(3).
- 22 Ie under ibid s 159(5).
- 23 The specified particulars are (1) in relation to information included in any entry which has been removed or amended or which is referred to in a notice of correction (a) particulars of any entry which has been removed from the file and a statement that it has been removed; (b) particulars of any entry which has been amended and of the amendment, or of the entry as amended; (c) particulars of the entry, together with a copy of the notice of correction; (2) where the information did not include the entry which has been removed or amended or which is referred to in a notice of correction but which (whether in the form of a rating or opinion or otherwise) was based in whole or in part on any such entry and has been, or falls to be, modified by reason of the removal, amendment or notice (a) particulars of the modified information; and (b) a statement that the information has been modified by reason of the removal, amendment or notice, as the case may be: Consumer Credit (Conduct of Business) (Credit References) Regulations 1977, SI 1977/330, reg 5(2).
- 24 As to the request, particulars and fee see the Consumer Credit Act 1974 s 158(1) (as amended); and para 285 ante.

25 Consumer Credit (Conduct of Business) (Credit References) Regulations 1977, SI 1977/330, reg 5(1).

UPDATE

271-287 Ancillary Credit Business

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

286 Correction of wrong information

TEXT AND NOTES--Consumer Credit Act 1974 s 159 further amended: Enterprise Act 2002 Sch 25 para 6(30).

The Information Commissioner (see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 559) may vary or revoke any order made by him under the Consumer Credit Act 1974 s 159: s 159(7) (added by Data Protection Act 1998 s 62(4); and amended by Freedom of Information Act 2000 Sch 2 para 7.

TEXT AND NOTES 1-4--Replaced. Any individual (the 'objector') given (1) information under the Data Protection Act 1998 s 7 (see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 525) by a credit reference agency, or (2) information under the 1974 Act s 158 (see PARA 285), who considers that an entry in his file is incorrect, and that if it is not corrected he is likely to be prejudiced, may give notice to the agency requiring it either to remove the entry from the file or amend it: s 159(1) (substituted by 1998 Act s 62(2)).

TEXT AND NOTES 5-22--In 1974 Act s 159(2)-(6) references to consumer are now to objector and references to Director are now to the relevant authority: 1998 Act s 62(3). In 1974 Act s 159 'the relevant authority' means (1) where the objector is a partnership or other unincorporated body of persons, the OFT, and (2) in any other case, the Data Protection Commissioner: s 159(8) (added by 1998 Act s 62(4); and amended by Enterprise Act 2002 Sch 25 para 6(30)).

NOTE 14--SI 1977/329 reg 4 now Consumer Credit (Credit Reference Agency) Regulations 2000, SI 2000/290, reg 5.

TEXT AND NOTE 25--In head (i) for 'consumer' read 'individual': SI 1977/330 reg 5(1) (substituted by SI 2000/291). For 'since the date ... consumer concerned' read 'since the relevant date it has furnished information relevant to the financial standing of the individual concerned': SI 1977/330 reg 5(1). 'Relevant date' means the date immediately preceding the receipt by the agency from the individual of the request, particulars and fee referred to in the Consumer Credit Act 1974 s 158(1), or the request and fee, if a fee is payable, referred to in the Data Protection Act 1998 s 7(2) and the information referred to in s 7(3): SI 1977/330 reg 5(3) (added by SI 2000/291).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/12. ANCILLARY CREDIT BUSINESS/(5) CREDIT REFERENCE AGENCY/287. Alternative procedure for consumers who carry on a business.

287. Alternative procedure for consumers who carry on a business.

An alternative procedure¹ exists in relation to a request from a consumer who carries on a business² for information about itself which enables a credit reference agency³ to withhold part of the file⁴ relating to that consumer⁵. For the procedure to be applicable the agency must have obtained a preliminary direction from the Director General of Fair Trading⁶ that the alternative procedure is available to it⁷.

Where such a direction has been obtained in favour of an agency, and that agency receives a request for a copy of its file from a business consumer, then the agency may elect to follow the alternative procedure⁸. In such a case, instead of giving the consumer a copy of the file, the agency must within seven working days⁹ give him notice¹⁰ of its election, and such information included in or based on entries in the file as may have been directed, together with a statement of his rights to apply to the director and to correct any wrong information¹¹.

If within 28 days after receiving such information, or such longer period as the director may allow, the consumer (1) gives notice to the director that he is dissatisfied with it¹²; and (2) satisfies the director that he has taken such steps in relation to the agency as may be reasonable with a view to removing the cause of his dissatisfaction¹³; and (3) pays the director the specified fee, the director may direct the agency to give him a copy of the file, and he may disclose to the consumer such of the information on the file as he thinks fit¹⁴.

The correction procedure¹⁵ applies to information given under these provisions as it applies to information given under the normal procedure¹⁶.

If an agency, having elected to proceed under this alternative procedure, fails to notify the consumer that it has adopted the alternative procedure or to give him the specified information in the first instance¹⁷, or fails to give the director a copy of the file when so directed¹⁸, it commits an offence¹⁹.

1 Ie alternative to the procedure set out in para 285 ante.

2 For the meaning of 'business' see para 81 note 7 ante.

3 For the meaning of 'credit reference agency' see para 274 ante.

4 For the meaning of 'file' see para 285 note 4 ante.

5 This procedure enables an agency to withhold, for example, its source of information, the revelation of which might seriously impair its information-collecting abilities.

6 As to the Director General of Fair Trading see para 110 ante.

7 The director may give such a direction on the application of an agency if he is satisfied that (1) compliance with the normal procedure in the case of consumers who carry on a business would adversely affect the service provided to its customers by the agency (Consumer Credit Act 1974 s 160(1)(a)); and (2) having regard to the methods employed by the agency and to any other relevant factors, it is probable that consumers carrying on a business would not be prejudiced by the making of the direction (s 160(1)(b)). There is no provision for appeal from an adverse decision of the director, who seems to be acting in a purely administrative capacity.

Applications for directions under s 160(1) must be made in Form CC301/75 accompanied by the particulars required by that form: General Notice 3.

8 Consumer Credit Act 1974 s 160(2). As to such a request see para 285 ante. The agency may make no election if it does not hold a file on the consumer, but, in such a case, must so inform him: see para 285 ante. For the meaning of 'copy' see para 174 text and note 4 ante.

9 Consumer Credit (Credit Reference Agency) Regulations 1977, SI 1977/329, reg 3(c). For the meaning of 'working day' see para 120 note 5 ante.

10 For the meaning of 'notice' see para 128 note 3 ante.

11 Ie his rights under the Consumer Credit Act 1974 s 160(4), (5): s 160(3). As to the correction procedure see para 286 ante. The statement of the consumer's rights under ss 159, 160 is contained in the Consumer Credit (Credit Reference Agency) Regulations 1977, SI 1977/329, reg 2, Sch 2.

12 Consumer Credit Act 1974 s 160(4)(a).

13 Ibid s 160(4)(b).

14 Ibid s 160(4)(c). As to the specified fee see para 110 note 17 ante.

15 Ie the procedure in para 286 ante.

16 Consumer Credit Act 1974 s 160(5). As to the normal procedure see para 285 ante.

17 Ie under ibid s 160(3) (see the text and note 11 supra).

18 Ie under ibid s 160(4) (see the text and notes 12-14 supra).

19 Ibid s 160(6). The offence is punishable on summary conviction by a fine not exceeding level 4 on the standard scale: s 167(1), Sch 1 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see para 202 note 19 ante.

UPDATE

271-287 Ancillary Credit Business

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

287 Alternative procedure for consumers who carry on a business

TEXT AND NOTES--Consumer Credit Act 1974 s 160 further amended: Enterprise Act 2002 Sch 25 para 6(31).

NOTE 9--Now Consumer Credit (Credit Reference Agency) Regulations 2000, SI 2000/290, reg 3.

NOTE 11--SI 1977/329 reg 2, Sch 2 now SI 2000/290 reg 4, Schs 1-3.

TEXT AND NOTES 12, 13--In heads (1) and (2) for 'he' read 'the consumer' and for 'his' read 'the consumer's': 1974 Act s 160(4)(a), (b) (both amended by the Data Protection Act 1998 s 62(5)). 'Consumer' has the same meaning as in s 158 (see PARA 285): s 160(7) (added by Data Protection Act 1998 s 62(5)).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/13. JUDICIAL CONTROL, OFFENCES AND ENFORCEMENT/(1) JUDICIAL CONTROL/288. Jurisdiction.

13. JUDICIAL CONTROL, OFFENCES AND ENFORCEMENT

(1) JUDICIAL CONTROL

288. Jurisdiction.

Actions by parties to consumer credit and consumer hire agreements¹ are generally subject to the same rules as to jurisdiction and venue as those brought by parties to any other kind of contract². However, the county court has exclusive jurisdiction³ to hear and determine (1) any action by the creditor⁴ or owner⁵ to enforce a regulated agreement⁶ or any security⁷ relating to it⁸; (2) any action to enforce any linked transaction⁹ against the debtor or hirer or his relative¹⁰; and (3) any application by the debtor or surety¹¹ to reopen an extortionate credit bargain¹² involving a regulated agreement, or an agreement, not being a regulated agreement, under which the creditor provides the debtor with fixed-sum credit or running-account credit¹³. There is a variety of special orders which are available to the court in the case of regulated agreements¹⁴. The court also has special jurisdiction to make declarations¹⁵.

1 For the meaning of 'consumer credit agreement' see para 81 ante; and for the meaning of 'consumer hire agreement' see para 82 ante.

2 As to contract generally see CONTRACT.

3 See the Consumer Credit Act 1974 s 141(1). See also *Sovereign Leasing plc v Ali* [1992] CCLR 1.

Where an action or application is brought in the High Court which ought to have been brought in the county court (under the Consumer Credit Act 1974 s 141) it will not be treated as improperly brought, but must be transferred to the county court: s 141(2). As to the transfer of actions from the High Court generally see COURTS.

As to bankruptcy proceedings see *Mills v Grove Securities Ltd* [1996] CCLR 74, CA.

4 For the meaning of 'creditor' see para 81 note 2 ante.

5 For the meaning of 'owner' see para 82 note 1 ante.

6 For the meaning of 'regulated agreement' see para 79 ante.

7 For the meaning of 'security' see para 200 note 1 ante.

8 Consumer Credit Act 1974 s 141(1)(a).

9 As to linked transactions see paras 90, 196-198 ante.

10 Consumer Credit Act 1974 s 141(1)(b). For the meaning of 'relative' see para 116 note 12 ante.

11 For the meaning of 'surety' see para 200 note 6 ante.

12 As to extortionate credit bargains see paras 109, 269-270 ante.

13 Consumer Credit Act 1974 s 139(5) (amended by the High Court and County Courts Jurisdiction Order 1991, SI 1991/724, Schedule Pt I). For the meaning of 'fixed-sum credit' see para 85 ante; and for the meaning of 'running-account credit' see para 84 ante.

14 As to the special orders available see para 290 post (enforcement orders); para 292 post (time orders); para 295 post (orders for the financial relief of the hirer); para 294 post (protection orders); and para 293 post (return and transfer orders).

15 See the Consumer Credit Act 1974 s 142; and para 291 post.

UPDATE

288-313 Judicial Control, Offences and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

288-297 Judicial Control

For provision relating to interest payable on judgment debts see Consumer Credit Act 1974 s 130A (added by Consumer Credit Act 2006 s 17). For transitional provision see Consumer Credit Act 2006 Sch 3 para 13. See further Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007, SI 2007/1167.

288 Jurisdiction

TEXT AND NOTE 13--Consumer Credit Act 1974 s 139 repealed: Consumer Credit Act 2006 Sch 4. See now Consumer Credit Act 1974 ss 140A-140D; and PARA 109.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/13. JUDICIAL CONTROL, OFFENCES AND ENFORCEMENT/(1) JUDICIAL CONTROL/289. Practice and procedure.

289. Practice and procedure.

An action to recover possession of goods¹ to which a regulated² hire-purchase agreement³ relates must be commenced in the court⁴ for the district in which the debtor⁵ resides or carries on business⁶ or resided or carried on business at the date when he last made a payment under the agreement⁷. Subject to certain exceptions⁸ all the parties to a regulated agreement, and any surety⁹, must be made parties to any proceedings relating to the agreement¹⁰. Where in any action or matter relating to a regulated agreement the debtor or any surety has not been served with the originating process, the court may, on the ex parte application of the plaintiff made at or before the hearing of the action or matter, dispense with this requirement¹¹. Where an action or matter relating to a regulated agreement is brought by a person to whom a former creditor's rights and duties under the agreement have passed by assignment or by operation of law, the requirement does not apply to the former creditor unless the court so directs¹².

Further provision is made as to practice and procedure in relation to time orders¹³, return and transfer orders¹⁴, and protection orders¹⁵.

- 1 For the meaning of 'goods' see para 82 note 5 ante.
- 2 As to the meaning of 'regulated' see para 79 ante.
- 3 For the meaning of 'hire-purchase agreement' see para 95 ante.
- 4 For the meaning of 'court' see para 134 note 9 ante.
- 5 For the meaning of 'debtor' see para 81 note 3 ante.
- 6 For the meaning of 'business' see para 81 note 7 ante.
- 7 CCR Ord 49 r 4(2).
- 8 ie exceptions provided by rules of court: see the text and notes 11-12 infra.
- 9 For the meaning of 'surety' see para 200 note 6 ante.
- 10 Consumer Credit Act 1974 s 141(5).
- 11 CCR Ord 49 r 4(3).
- 12 CCR Ord 49 r 4(4).
- 13 See para 292 post.
- 14 See para 293 post.
- 15 See para 294 post.

UPDATE

288-313 Judicial Control, Offences and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements

mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

288-297 Judicial Control

For provision relating to interest payable on judgment debts see Consumer Credit Act 1974 s 130A (added by Consumer Credit Act 2006 s 17). For transitional provision see Consumer Credit Act 2006 Sch 3 para 13. See further Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007, SI 2007/1167.

289 Practice and procedure

TEXT AND NOTES--CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/13. JUDICIAL CONTROL, OFFENCES AND ENFORCEMENT/(1) JUDICIAL CONTROL/290. Enforcement orders in cases of infringement.

290. Enforcement orders in cases of infringement.

Where, following an infringement of certain provisions of the Consumer Credit Act 1974¹, an application is made for an enforcement order² to enforce an agreement or a security³, the court⁴ must dismiss it if, but only if, it considers it just to do so having regard to (1) the prejudice caused to any person by, and the degree of culpability for, the contravention in question⁵; and (2) its own powers to impose conditions or vary the relevant agreement⁶. If it appears to the court just to do so, it may, in an enforcement order, reduce or discharge any sum payable by the debtor or hirer, or by any surety⁷, so as to compensate him for prejudice suffered as a result of the contravention in question⁸.

There are special provisions relating to enforcement of an improperly executed agreement⁹.

The court may also, in certain circumstances, make enforcement orders on the death of the debtor or hirer¹⁰.

1 Ie those relating to (1) improperly executed agreements (see the Consumer Credit Act 1974 s 65(1); the text and note 9 infra; and para 169 ante); (2) improperly executed security instruments (see s 105(7)(a), (b); and para 200 ante); (3) failure to serve copy of notice on surety (see s 111(2); and para 206 ante); or (4) taking of a negotiable instrument in contravention of s 123 (as to which see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1472) (see s 124(1), (2); and para 219 ante): s 127(1). As to orders necessitated by the death of a debtor or hirer see para 249 ante. For the meaning of 'debtor' see para 81 note 3 ante. For the meaning of 'hirer' see para 82 note 3 ante.

See also *Nissan Finance UK Ltd v Lockhart* [1993] CCLR 39, CA (improperly executed agreement).

2 'Enforcement order' means an order under the Consumer Credit Act 1974 s 65(1), s 105(7)(a), s 105(7)(b), s 111(2), s 124(1) or s 124(2): s 189(1). See also note 1 supra. As to the granting of declarations see para 291 post.

3 For the meaning of 'security' see para 200 note 1 ante.

4 For the meaning of 'court' see para 134 note 9 ante.

5 Consumer Credit Act 1974 s 127(1)(i).

6 Ibid s 127(1)(ii). For the power to impose conditions and vary agreements see paras 296-297 post.

7 For the meaning of 'surety' see para 200 note 6 ante.

8 Consumer Credit Act 1974 s 127(2).

9 See ibid ss 65(1), 127(3), (4), (5); and para 169 ante.

10 See ibid s 128; and para 249 ante.

UPDATE

288-313 Judicial Control, Offences and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory

Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

288-297 Judicial Control

For provision relating to interest payable on judgment debts see Consumer Credit Act 1974 s 130A (added by Consumer Credit Act 2006 s 17). For transitional provision see Consumer Credit Act 2006 Sch 3 para 13. See further Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007, SI 2007/1167.

290 Enforcement orders in cases of infringement

NOTE 1--1974 Act s 127(1) amended: Consumer Credit Act 2006 Sch 4.

TEXT AND NOTE 9--1974 Act s 127(3)-(5) repealed: Consumer Credit Act 2006 s 15, Sch 4.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/13. JUDICIAL CONTROL, OFFENCES AND ENFORCEMENT/(1) JUDICIAL CONTROL/291. Power to grant declarations.

291. Power to grant declarations.

Where under any provision of the Consumer Credit Act 1974 a thing can be done by a creditor¹ or owner² on an enforcement order³ only, and either (1) the court⁴ dismisses (except on technical grounds only⁵) an application for an enforcement order⁶; or (2) where no such application has been made or such an application has been dismissed on technical grounds only, an interested party applies to the court for a declaration, the court may, if it thinks just, make a declaration that the creditor or owner is not entitled to do that thing, and thereafter no application for an enforcement order in respect of it may be entertained⁷.

A similar power to make a declaration avails where (a) a regulated agreement or linked transaction⁸ is cancelled⁹; or (b) a regulated agreement is terminated¹⁰ following the wrongful recovery of protected goods¹¹, and an interested party applies to the court for such a declaration¹².

- 1 For the meaning of 'creditor' see para 81 note 2 ante.
- 2 For the meaning of 'owner' see para 82 note 1 ante.
- 3 As to enforcement orders see para 290 ante.
- 4 For the meaning of 'court' see para 134 note 9 ante.
- 5 An application dismissed by the court will, if the court so certifies, be taken to be dismissed on technical grounds only: Consumer Credit Act 1974 s 189(5).
- 6 Ibid s 142(1)(a).
- 7 Ibid s 142(1)(b). Where such a declaration is made in respect of a regulated agreement, any security provided in relation to the agreement will be ineffective: s 113(3). For the meaning of 'regulated agreement' see para 79 ante. For the meaning of 'security' see para 200 note 1 ante. As to ineffective securities see para 222 ante.
- 8 As to linked transactions see paras 90, 196-198 ante.
- 9 Consumer Credit Act 1974 s 142(2)(a). The cancellation is under s 69(1) or s 69(2) (see para 185 ante).
- 10 Ie under ibid s 91 (see para 265 ante).
- 11 Ibid s 142(2)(b). For the meaning of 'protected goods' see para 265 ante.
- 12 Ibid s 142(2).

UPDATE

288-313 Judicial Control, Offences and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

288-297 Judicial Control

For provision relating to interest payable on judgment debts see Consumer Credit Act 1974 s 130A (added by Consumer Credit Act 2006 s 17). For transitional provision see Consumer Credit Act 2006 Sch 3 para 13. See further Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007, SI 2007/1167.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/13. JUDICIAL CONTROL, OFFENCES AND ENFORCEMENT/(1) JUDICIAL CONTROL/292. Time orders for debtors and hirers.

292. Time orders for debtors and hirers.

The court¹ may, if it appears just to do so, on an application made for that purpose², or in certain other proceedings already before it³, make an order, known as a 'time order'⁴, allowing a debtor or hirer or surety⁵ an extension of time for meeting any of his obligations under a regulated agreement⁶. A time order must provide for one or both, as the court considers just, of (1) the payment by the debtor or hirer or any surety of any sum owed⁷ under a regulated agreement, or a security⁸, by such instalments, payable at such times, as the court, having regard to the means of the debtor or hirer and any surety, considers reasonable⁹; and (2) the remedying by the debtor or hirer of any breach of a regulated agreement, other than the non-payment of money, within such period as the court may specify¹⁰. A time order so made may be varied or revoked on the application of any person affected by it¹¹.

Where, following the making of a time order in relation to a regulated agreement under which goods¹² were bailed to a debtor or hirer¹³, that debtor or hirer remains in possession of the goods, he must be treated, except in the case of a debtor to whom the creditor's title has passed, as a bailee of the goods under the terms of the agreement, notwithstanding that it has been terminated¹⁴.

1 For the meaning of 'court' see para 134 note 9 ante.

2 Such an application may be made by a debtor or hirer after the service on him of (1) a default notice (Consumer Credit Act 1974 s 129(1)(b)(i)); or (2) a notice of the type required before the creditor or owner may enforce a term of the agreement by taking certain action (see s 76(1); and para 234 ante), or a notice of termination in a non-default case (see s 98(1); and para 262 ante) (s 129(1)(b)(ii)). For the meaning of 'debtor' see para 81 note 3 ante; and for the meaning of 'hirer' see para 82 note 3 ante. As to default notices see paras 263-264 ante. For the meaning of 'creditor' see para 81 note 2 ante; and for the meaning of 'owner' see para 82 note 1 ante.

3 Ie (1) an application for an enforcement order (see para 290 ante) (*ibid* s 129(1)(a)); or (2) an action brought by a creditor or owner to enforce a regulated agreement or any security, or recover possession of any goods or land to which a regulated agreement relates (s 129(1)(c)).

4 *Ibid* ss 129(1), 189(1). As to time orders see *First National Bank plc v Syed* [1991] 2 All ER 250, [1991] CCLR 37, CA; *Cedar Holdings Ltd v Thompson* [1993] CCLR 7; *Southern and District Finance plc v Barnes* [1995] CCLR 62, CA.

5 For the meaning of 'surety' see para 200 note 6 ante.

6 See the Consumer Credit Act 1974 s 129(1), (2). For the meaning of 'regulated agreement' see para 79 ante.

7 In the case of a hire-purchase or conditional sale agreement only, a time order may deal with sums which, although not payable by the debtor at the time the order is made, would, if the agreement continued in force, become payable under it subsequently: *ibid* s 130(2). For the meaning of 'hire-purchase agreement' see para 95 ante; and for the meaning of 'conditional sale agreement' see para 93 ante.

8 For the meaning of 'security' see para 200 note 1 ante.

9 Consumer Credit Act 1974 s 129(2)(a). Where, in accordance with rules of court, an offer to pay any sum by instalments is made by the debtor or hirer and accepted by the creditor or owner, the court may in accordance with rules of court make a time order giving effect to the offer without hearing evidence of means: s 130(1). An order for payment by instalments must not be made where the regulated agreement is secured by a pledge if service of a notice is not necessary for enforcement of the pledge by reason of an exemption conferred by regulations under s 76(5) (see para 234 ante), s 87(4) (see para 263 ante) or s 98(5) (see para 262

ante): s 130(3). As to pledges see further para 208 et seq; and BAILMENT; PLEDGES AND PAWNS vol 36(1) (2007 Reissue) para 1 et seq. As to the vesting of title where the total due is paid see para 293 text and note 16 post. At the date at which this volume states the law there are no rules made expressly for the purposes of s 130. As to the procedure generally applicable where a defendant admits liability and offers to pay by instalments see CCR Ord 9 r 2; and COURTS.

10 Consumer Credit Act 1974 s 129(2)(b). During the period so allowed the creditor or owner (1) may not take action such as is mentioned in s 87(1) (see para 263 ante) (s 130(5)(a)); (2) where (a) a provision of the agreement ('the secondary provision') becomes operative only on breach of another provision of the agreement ('the primary provision'); and (b) the time order provides for the remedying of such a breach of the primary provision within the relevant period, must not treat the secondary provision as operative before the end of that period (s 130(5)(b)); and (3) if while the relevant period subsists the breach to which the order relates is remedied it must be treated as never having occurred (s 130(5)(c)).

The provisions of s 130(5) are without prejudice to anything done by the creditor or owner before the commencement of the period specified in the time order: s 130(5).

11 Ibid s 130(6).

12 For the meaning of 'goods' see para 82 note 5 ante.

13 Ie a hire-purchase agreement, a conditional sale agreement or a consumer hire agreement. For the meaning of 'hire-purchase agreement' see para 95 ante; for the meaning of 'conditional sale agreement' see para 93 ante; and for the meaning of 'consumer hire agreement' see para 82 ante.

14 Consumer Credit Act 1974 s 130(4). See also *Bentworth Finance Ltd v Jones* (1963) 114 L Jo 140.

UPDATE

288-313 Judicial Control, Offences and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

288-297 Judicial Control

For provision relating to interest payable on judgment debts see Consumer Credit Act 1974 s 130A (added by Consumer Credit Act 2006 s 17). For transitional provision see Consumer Credit Act 2006 Sch 3 para 13. See further Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007, SI 2007/1167.

292 Time orders for debtors and hirers

TEXT AND NOTES 1-6--Consumer Credit Act 1974 s 129(1) amended: Consumer Credit Act 2006 s 16(1). See also Consumer Credit Act 2006 Sch 3 para 12. See further Consumer Credit Act 1974 s 129A (added by Consumer Credit Act 2006 s 16(2)) (debtor or hirer to give notice of intent etc to creditor or owner).

NOTE 9--CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/13. JUDICIAL CONTROL, OFFENCES AND ENFORCEMENT/(1) JUDICIAL CONTROL/293. Return and transfer orders for hire-purchase and conditional sale agreements.

293. Return and transfer orders for hire-purchase and conditional sale agreements.

If, in relation to a regulated¹ hire-purchase or conditional sale agreement², it appears to the court³ just to do so (1) on an application for an enforcement order⁴ or time order⁵; or (2) in an action brought by the creditor⁶ to recover possession of goods⁷ to which the agreement relates the court may (a) make an order (a 'return order') for the return to the creditor of goods to which the agreement relates⁸; (b) make an order (a 'transfer order') for the transfer to the debtor⁹ of the creditor's title to certain goods to which the agreement relates ('the transferred goods'), and the return to the creditor of the remainder of the goods¹⁰.

In determining for these purposes how much of the total price¹¹ has been paid ('the paid-up sum'), the court may (i) treat any sum paid by the debtor, or owed by the creditor, in relation to the goods as part of the paid-up sum¹²; (ii) deduct any sum owed by the debtor in relation to the goods (otherwise than as part of the total price) from the paid-up sum, and make corresponding reductions in amounts so owed¹³.

Where a transfer order is made, the transferred goods will be such of the goods to which the agreement relates as the court thinks just; but an order may be made only where the paid-up sum exceeds the part of the total price referable to the transferred goods by an amount equal to at least one-third of the unpaid balance of the total price¹⁴.

Notwithstanding the making of a return order or transfer order, the debtor may at any time before the goods enter the possession of the creditor, on payment of the balance of the total price and the fulfilment of any other necessary conditions, claim the goods ordered to be returned to the creditor¹⁵. When, in pursuance of a time order or under these provisions, the total price of goods under a regulated hire-purchase agreement or regulated conditional sale agreement is paid and any other necessary conditions are fulfilled, the creditor's title to the goods vests in the debtor¹⁶.

If, in contravention of a return order or transfer order, any goods to which the order relates are not returned to the creditor, the court, on the application of the creditor, may (A) revoke so much of the order as relates to those goods¹⁷; and (B) order the debtor to pay the creditor the unpaid portion of so much of the total price as is referable to those goods¹⁸.

1 For the meaning of 'regulated' see para 79 ante.

2 For the meaning of 'hire-purchase agreement' see para 95 ante; and for the meaning of 'conditional sale agreement' see para 93 ante.

3 For the meaning of 'court' see para 134 note 9 ante.

4 As to enforcement orders see para 290 ante.

5 Consumer Credit Act 1974 s 133(1)(a). As to time orders see para 292 ante.

6 For the meaning of 'creditor' see para 81 note 2 ante.

7 For the meaning of 'goods' see para 82 note 5 ante.

8 Consumer Credit Act 1974 s 133(1)(i).

9 For the meaning of 'debtor' see para 81 note 3 ante.

- 10 Consumer Credit Act 1974 s 133(1)(ii).
- 11 For the meaning of 'total price' see para 83 note 9 ante.
- 12 Consumer Credit Act 1974 s 133(2)(a).
- 13 Ibid s 133(2)(b).
- 14 Ibid s 133(3). The part of the total price referable to any goods is the part assigned to those goods by the agreement or (if no such assignment is made) the part determined by the court to be reasonable: s 133(7).
- 15 Ibid s 133(4).
- 16 Ibid s 133(5).
- 17 Ibid s 133(6)(a).
- 18 Ibid s 133(6)(b).

UPDATE

288-313 Judicial Control, Offences and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

288-297 Judicial Control

For provision relating to interest payable on judgment debts see Consumer Credit Act 1974 s 130A (added by Consumer Credit Act 2006 s 17). For transitional provision see Consumer Credit Act 2006 Sch 3 para 13. See further Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007, SI 2007/1167.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/13. JUDICIAL CONTROL, OFFENCES AND ENFORCEMENT/(1) JUDICIAL CONTROL/294. Protection orders.

294. Protection orders.

The court¹, on the application of the creditor² or owner³ under a regulated agreement⁴, may make such orders as it thinks just for protecting any property of that creditor or owner, or property subject to any security⁵, from damage or depreciation pending the determination of any proceedings under the Consumer Credit Act 1974⁶. The orders which the court may make include those restricting or prohibiting use of the property or giving directions as to its custody⁷.

- 1 For the meaning of 'court' see para 134 note 9 ante.
- 2 For the meaning of 'creditor' see para 81 note 2 ante.
- 3 For the meaning of 'owner' see para 82 note 1 ante.
- 4 For the meaning of 'regulated agreement' see para 79 ante.
- 5 For the meaning of 'security' see para 200 note 1 ante.
- 6 Consumer Credit Act 1974 s 131.
- 7 Ibid s 131.

UPDATE

288-313 Judicial Control, Offences and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

288-297 Judicial Control

For provision relating to interest payable on judgment debts see Consumer Credit Act 1974 s 130A (added by Consumer Credit Act 2006 s 17). For transitional provision see Consumer Credit Act 2006 Sch 3 para 13. See further Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007, SI 2007/1167.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/13. JUDICIAL CONTROL, OFFENCES AND ENFORCEMENT/(1) JUDICIAL CONTROL/295. Financial relief for hirer.

295. Financial relief for hirer.

Where the owner¹ under a regulated² consumer hire agreement³ recovers possession of goods⁴ to which the agreement relates otherwise than by action, the hirer⁵ may apply to the court⁶ for an order that (1) the whole or part of any sum paid by the hirer to the owner⁷ in respect of the goods must be repaid⁸; and (2) the obligation to pay the whole or part of any sum owed by the hirer to the owner in respect of the goods must cease⁹, and if it appears to the court just to do so, having regard to the extent of the enjoyment of the goods by the hirer, the court must grant the application in full or in part¹⁰. The court may include the same provisions in an order made in proceedings relating to a regulated consumer hire agreement for the delivery to the owner of goods to which the agreement relates¹¹.

1 For the meaning of 'owner' see para 82 note 1 ante.

2 For the meaning of 'regulated' see para 79 ante.

3 For the meaning of 'consumer hire agreement' see para 82 ante.

4 For the meaning of 'goods' see para 82 note 5 ante.

5 For the meaning of 'hirer' see para 82 note 3 ante.

6 For the meaning of 'court' see para 134 note 9 ante.

7 For the meaning of 'owner' see para 82 note 1 ante.

8 Consumer Credit Act 1974 s 132(1)(a).

9 Ibid s 132(1)(b).

10 Ibid s 132(1). As to the hirer's entitlement to equitable relief against forfeiture see *Barton, Thompson & Co Ltd v Stapling Machines Co* [1966] Ch 499, [1966] 2 All ER 222; *Transag Haulage Ltd v Leyland DAF Finance plc* [1994] CCLR 111, [1994] BCC 356.

11 Consumer Credit Act 1974 s 132(2).

UPDATE

288-313 Judicial Control, Offences and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

288-297 Judicial Control

For provision relating to interest payable on judgment debts see Consumer Credit Act 1974 s 130A (added by Consumer Credit Act 2006 s 17). For transitional provision see

Consumer Credit Act 2006 Sch 3 para 13. See further Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007, SI 2007/1167.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/13. JUDICIAL CONTROL, OFFENCES AND ENFORCEMENT/(1) JUDICIAL CONTROL/296. Power to impose conditions or suspend operation of an order.

296. Power to impose conditions or suspend operation of an order.

If it considers it just to do so, the court¹ may in an order made by it in relation to a regulated agreement² include provisions (1) making the operation of any term of the order conditional on the doing of specified acts by any party to the proceedings³; and (2) suspending the operation of any term of the order either (a) until such time as the court subsequently directs⁴; or (b) until the occurrence of a specified act or omission⁵.

The court must not suspend the operation of a term requiring the delivery up of goods⁶ by any person unless satisfied that the goods are in his possession or control⁷. In the case of a consumer hire agreement⁸, the court must not use its powers to suspend the operation of any term of the order so as to extend the period for which, under the terms of the agreement, the hirer⁹ is entitled to possession of the goods to which the agreement relates¹⁰.

Where any such provision imposing conditions or suspending the operation of an order is made it may be varied by the court on the application of any person affected by it¹¹.

1 For the meaning of 'court' see para 134 note 9 ante.

2 For the meaning of 'regulated agreement' see para 79 ante. As to the orders which a court can make in relation to such an agreement see paras 290-295 ante.

3 Consumer Credit Act 1974 s 135(1)(a).

4 Ibid s 135(1)(b)(i).

5 Ibid s 135(1)(b)(ii).

6 For the meaning of 'goods' see para 82 note 5 ante.

7 Consumer Credit Act 1974 s 135(2).

8 For the meaning of 'consumer hire agreement' see para 82 ante.

9 For the meaning of 'hirer' see para 82 note 3 ante.

10 Consumer Credit Act 1974 s 135(3).

11 See ibid s 135(4).

UPDATE

288-313 Judicial Control, Offences and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

288-297 Judicial Control

For provision relating to interest payable on judgment debts see Consumer Credit Act 1974 s 130A (added by Consumer Credit Act 2006 s 17). For transitional provision see Consumer Credit Act 2006 Sch 3 para 13. See further Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007, SI 2007/1167.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/13. JUDICIAL CONTROL, OFFENCES AND ENFORCEMENT/(1) JUDICIAL CONTROL/297. Power to vary agreements and securities.

297. Power to vary agreements and securities.

The court¹ may in an order made by it under the Consumer Credit Act 1974 include such provision as it considers just for amending any agreement or security² in consequence of a term of the order³.

1 For the meaning of 'court' see para 134 note 9 ante.

2 For the meaning of 'security' see para 200 note 1 ante.

3 Consumer Credit Act 1974 s 136. As to the power of the court to alter the charge for credit see *Southern and District Finance plc v Barnes* [1995] CCLR 62, CA. See also *Cedar Holdings Ltd v Jenkins* [1988] CCLR 34.

UPDATE

288-313 Judicial Control, Offences and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

288-297 Judicial Control

For provision relating to interest payable on judgment debts see Consumer Credit Act 1974 s 130A (added by Consumer Credit Act 2006 s 17). For transitional provision see Consumer Credit Act 2006 Sch 3 para 13. See further Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007, SI 2007/1167.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/13. JUDICIAL CONTROL, OFFENCES AND ENFORCEMENT/ (2) OFFENCES, SANCTIONS AND EVIDENCE/298. Penalties.

(2) OFFENCES, SANCTIONS AND EVIDENCE

298. Penalties.

In relation to regulated agreements¹, various acts and omissions are designated as offences by the Consumer Credit Act 1974, with appropriate mode or modes of trial and maximum penalties available for each such offence specified².

1 For the meaning of 'regulated agreement' see para 79 ante.

2 See the Consumer Credit Act 1974 s 167(1), Sch 1. The provision of the Act creating the offence is set out in Sch 1, column 1, a brief description of it is in column 2, the mode or modes of prosecution are in column 3 and the penalty is in column 4. In column 4 a period of time indicates the maximum term of imprisonment, and a monetary amount indicates the maximum fine for the offence in question: see s 167(1).

UPDATE

288-313 Judicial Control, Offences and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/13. JUDICIAL CONTROL, OFFENCES AND ENFORCEMENT/ (2) OFFENCES, SANCTIONS AND EVIDENCE/299. Defences.

299. Defences.

Apart from the general defences which might be available on any criminal charge¹ there are certain statutory defences available on a charge of an offence contrary to the Consumer Credit Act 1974². Thus, in any proceedings for such an offence, it is a defence for the person charged to prove that his act or omission was due to a mistake³, or to reliance on information supplied to him, or to an act or omission by another person⁴, or to an accident⁵ or to some other cause beyond his control⁶, and that he took all reasonable precautions and exercised all due diligence to avoid such an act or omission by himself or any person under his control⁷.

If the defence under these provisions involves the allegation that the act or omission was due to an act or omission by another person or to reliance on information supplied by another person, the person charged is not, without leave of the court⁸, entitled to rely on that defence unless, within a period ending seven clear days before the hearing, he has served on the prosecutor a notice⁹ giving such information identifying or assisting in the identification of that other person as was then in his possession¹⁰.

1 As to such defences generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 16 et seq.

2 For a complete list of offences under the Consumer Credit Act 1974 and the penalties for each see s 167, Sch 1. See also para 298 ante.

3 As to mistakes see *Hall v Farmer* [1970] 1 All ER 729, [1970] 1 WLR 366, DC (decided under similar provisions in the Weights and Measures Act 1963 (repealed: see now the Weights and Measures Act 1985; and WEIGHTS AND MEASURES)); *Birkenhead and District Co-operative Society v Roberts* [1970] 3 All ER 391, [1970] 1 WLR 1497, DC (a case on the Trade Descriptions Act 1968 s 24). Both these cases decided that this defence was not available if the mistake sought to be relied on was that of a person other than the one charged: see further note 4 infra.

4 This seems to be the correct head of defence to rely on where the person charged wishes to rely upon the mistake of a third person: *Birkenhead and District Co-operative Society v Roberts* [1970] 3 All ER 391, [1970] 1 WLR 1497, DC; and see note 3 supra. The fact that the person who was responsible for the relevant act or omission was a shop manager in a position of responsibility does not disentitle his employer from relying on this defence: *Beckett v Kingston Bros (Butchers) Ltd* [1970] 1 QB 606, [1970] 1 All ER 715, DC; *Tesco Supermarkets Ltd v Natrass* [1972] AC 153, [1971] 2 All ER 127, HL.

5 As to accident as a defence see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 19.

6 Consumer Credit Act 1974 s 168(1)(a).

7 Ibid s 168(1)(b). Cf the similar provisions in the Trade Descriptions Act 1968 s 23 (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) para 503); and the Fair Trading Act 1973 s 24. As to what constitutes the taking of 'all reasonable precautions' see further *Beckett v Kingston Bros (Butchers) Ltd* [1970] 1 QB 606, [1970] 1 All ER 715, DC; *Tesco Supermarkets Ltd v Natrass* [1972] AC 153, [1971] 2 All ER 127, HL. See also *Brookes v Retail Credit Cards Ltd* [1986] CCLR 5, [1986] Crim LR 327, DC; *Coventry City Council v Lazarus* [1996] CCLR 5, 160 JP 188.

8 For the meaning of 'court' see para 134 note 9 ante.

9 For the meaning of 'notice' see para 128 note 3 ante.

10 Consumer Credit Act 1974 s 168(2). As to where the court refused leave see *Birkenhead and District Co-operative Society v Roberts* [1970] 3 All ER 391, [1970] 1 WLR 1497, DC.

UPDATE

288-313 Judicial Control, Offences and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

299 Defences

NOTE 7--Fair Trading Act 1973 s 24 repealed: Enterprise Act 2002 Sch 26.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/13. JUDICIAL CONTROL, OFFENCES AND ENFORCEMENT/ (2) OFFENCES, SANCTIONS AND EVIDENCE/300. Offences by bodies corporate.

300. Offences by bodies corporate.

For the purposes of any offence established by or under the Consumer Credit Act 1974, the general principles of criminal liability apply¹.

All the offences created by the Act can be committed by bodies corporate². Where a prescribed state of mind is a necessary element of an offence³, the state of mind of certain persons who control the body corporate will be imputed to it⁴. Moreover, where at any time a body corporate commits an offence under the 1974 Act with the consent or connivance of, or because of neglect by, any individual⁵, the individual commits the like offence if at that time (1) he is a director, manager, secretary or similar officer of the body corporate⁶; or (2) he is purporting to act as such an officer⁷; or (3) the body corporate is managed by its members, of whom he is one⁸.

1 As to the general principles of criminal liability see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 4 et seq. Most of the offences created under the Consumer Credit Act 1974 are offences of strict liability, as to which see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 15.

2 In the construction of any statutory provision relating to an offence punishable on indictment or on summary conviction, 'person' includes a body corporate: see the Interpretation Act 1978 ss 5, 22(1), 23(1), Sch 1, Sch 2 para 4(1)(a); and STATUTES vol 44(1) (Reissue) para 1382.

3 Eg the offence of wilfully obstructing an officer of an enforcement authority: see para 311 post.

4 See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 38.

5 For the meaning of 'individual' see para 80 note 1 ante.

6 Consumer Credit Act 1974 s 169(a).

7 Ibid s 169(b).

8 Ibid s 169(c).

UPDATE

288-313 Judicial Control, Offences and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/13. JUDICIAL CONTROL, OFFENCES AND ENFORCEMENT/ (2) OFFENCES, SANCTIONS AND EVIDENCE/301. No further sanctions for breach of the Consumer Credit Act 1974.

301. No further sanctions for breach of the Consumer Credit Act 1974.

The Consumer Credit Act 1974 is intended to establish, in relation to regulated agreements¹, a comprehensive and exhaustive code². A breach of any requirement made (otherwise than by any court³) by or under the Consumer Credit Act 1974 incurs no civil or criminal sanction as being such a breach, except to the extent (if any) expressly provided by or under the Act⁴.

This does not prevent the grant of an injunction, or the making of an order of certiorari, mandamus or prohibition⁵.

1 For the meaning of 'regulated agreement' see para 79 ante.

2 See *Reform of the Law on Consumer Credit* (Cmnd 5427) (1973) paras 1-14.

3 For the meaning of 'court' see para 134 note 9 ante.

4 Consumer Credit Act 1974 s 170(1). This does not prevent the Director General of Fair Trading, in exercising his functions under the Consumer Credit Act 1974, from taking account of any matter appearing to him to constitute a breach of a requirement made by or under the Act, whether or not any sanction for that breach is provided by or under the Act and, if it is so provided, whether or not proceedings have been brought in respect of the breach: s 170(2). As to the Director General of Fair Trading see para 110 ante.

5 See *ibid* s 170(3). As to injunctions see CIVIL PROCEDURE vol 11 (2009) PARA 331 et seq. As to orders of certiorari, mandamus and prohibition see JUDICIAL REVIEW vol 61 (2010) PARA 602.

UPDATE

288-313 Judicial Control, Offences and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

301 No further sanctions for breach of the Consumer Credit Act 1974

TEXT AND NOTES--Consumer Credit Act 1974 s 170 amended: Enterprise Act 2002 Sch 25 para 6(35).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/13. JUDICIAL CONTROL, OFFENCES AND ENFORCEMENT/ (2) OFFENCES, SANCTIONS AND EVIDENCE/302. Onus of proof and evidence.

302. Onus of proof and evidence.

The Consumer Credit Act 1974 makes specific provisions as to the onus of proof¹ in relation to certain matters which fall within its ambit². It also establishes certain statutory presumptions which must apply unless the contrary is proved³.

1 As to the burden of proof in criminal proceedings see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) paras 1368-1373; and as to the burden of proof in civil proceedings see CIVIL PROCEDURE vol 11 (2009) PARA 769 et seq.

2 Regulations relating to the form and content of advertisements (under the Consumer Credit Act 1974 s 44: see para 145 ante) and of quotations (under s 52: see para 155 ante) may make provision as to the onus of proof in any proceedings to enforce them: s 171(3). Note that there are no regulations relating to quotations in force: see para 155 ante.

In proceedings brought by the creditor under a credit-token agreement it is for him to prove that the token was lawfully supplied to the debtor and accepted by him (s 171(4)(a)); and if the debtor alleges that any use made of the token was not authorised by him, it is for the creditor to prove either that the use was so authorised or that it occurred before notice had been given under s 84(3) (see para 247 ante) (s 171(4)(b)(i), (ii)). For the meaning of 'creditor' see para 81 note 2 ante. For the meaning of 'credit-token agreement' see para 88 ante. For the meaning of 'debtor' see para 81 note 3 ante.

In proceedings in respect of a prohibited document being received by a minor at any school or other educational establishment for minors (see para 153 ante) it is for the person sending it to him at that establishment to prove that he did not know or suspect it to be such an establishment: s 171(5).

In proceedings in respect of unreasonable refusal to allow a pawn to be redeemed, it is for the person to prove that he had reasonable cause so to refuse: s 171(6).

If in any proceedings under s 139(1) (see para 270 ante) the debtor or any surety alleges that a credit bargain is extortionate, it is for the creditor to prove the contrary: s 171(7). For the meaning of 'surety' see para 200 note 6 ante.

3 If an agreement contains a term signifying that in the parties' opinion ibid s 10(3)(b)(iii) (see para 84 head (2)(c) ante) does not apply to the agreement, it must be taken not to apply unless the contrary is proved: s 171(1). When a person has initiated a transaction as mentioned in s 19(1)(c) (see para 196 ante) it must be assumed in any proceedings that he knew the principal agreement had been made, or contemplated that it might be made, unless the contrary is proved: s 171(2). As to rebuttable presumptions see CIVIL PROCEDURE vol 11 (2009) PARA 1096 et seq.

UPDATE

288-313 Judicial Control, Offences and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

302 Onus of proof and evidence

NOTE 2--Consumer Credit Act 1974 s 171(7) repealed: Consumer Credit Act 2006 Sch 4.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/13. JUDICIAL CONTROL, OFFENCES AND ENFORCEMENT/ (2) OFFENCES, SANCTIONS AND EVIDENCE/303. Statements to be binding.

303. Statements to be binding.

The Consumer Credit Act 1974 provides that certain statements made by the creditor¹, owner² or trader³ are binding on him⁴. However, in proceedings before a court⁵ in which it is sought to rely on any such statement or notice⁶, and the statement or notice is shown in fact to be incorrect⁷, the court may direct such relief, if any, to be given to the creditor or owner from the operation of this provision as appears to it to be just⁸.

1 For the meaning of 'creditor' see para 81 note 2 ante.

2 For the meaning of 'owner' see para 82 note 1 ante.

3 As to who is the 'trader' see para 261 ante.

4 See the Consumer Credit Act 1974 s 172. See also *Lombard North Central plc v Stobart* [1990] CCLR 53, CA.

A statement made by a creditor or owner is binding on him if given under the Consumer Credit Act 1974 s 77(1) (as amended) (see para 236 ante); s 78(1) (as amended) (see para 237 ante); s 79(1) (as amended) (see para 240 ante); s 97(1) (see para 256 ante); s 107(1)(c) (see para 202 ante); s 108(1)(c) (see para 203 ante); or s 109(1)(c) (see para 204 ante); s 172(1).

Where a trader gives a customer a notice in compliance with s 103(1)(b), or a notice under s 103(1) asserting that the customer is not indebted to him under an agreement, the notice is binding on the trader: s 172(2). As to who is a customer see para 261 ante. As to notices under s 103 see para 261 ante.

5 For the meaning of 'court' see para 134 note 9 ante.

6 Consumer Credit Act 1974 s 172(3)(a). The statement or notice is one given as mentioned in s 172(1) or s 172(2): s 172(3)(a). For the meaning of 'notice' see para 128 note 3 ante.

7 Ibid s 172(3)(b).

8 Ibid s 172(3).

UPDATE

288-313 Judicial Control, Offences and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/13. JUDICIAL CONTROL, OFFENCES AND ENFORCEMENT/ (2) OFFENCES, SANCTIONS AND EVIDENCE/304. Notification of convictions and judgments to the Director General of Fair Trading.

304. Notification of convictions and judgments to the Director General of Fair Trading.

Where a person is convicted of an offence or has a judgment given against him by or before any court in the United Kingdom¹ and it appears to that court² (1) having regard to the functions of the Director General of Fair Trading³ under the Consumer Credit Act 1974⁴, that the conviction or judgment should be brought to his attention⁵; and (2) that it may not be brought to his attention unless arrangements for that purpose are made by the court⁶, the court itself may make such arrangements, notwithstanding that the proceedings have been finally disposed of⁷.

- 1 For the meaning of 'United Kingdom' see para 70 note 4 ante.
- 2 For the meaning of 'court' see para 134 note 9 ante.
- 3 As to the Director General of Fair Trading see para 110 ante.
- 4 As to the director's functions under the Consumer Credit Act 1974 see para 110 ante.
- 5 Ibid s 166(a).
- 6 Ibid s 166(b).
- 7 Ibid s 166.

UPDATE

288-313 Judicial Control, Offences and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

304 Notification of convictions and judgments to the Director General of Fair Trading

TEXT AND NOTES--Consumer Credit Act 1974 s 166 amended: Enterprise Act 2002 Sch 25 para 6(34).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/13. JUDICIAL CONTROL, OFFENCES AND ENFORCEMENT/(3) ENFORCEMENT/305. Enforcement authorities.

(3) ENFORCEMENT

305. Enforcement authorities.

The duty of enforcing the Consumer Credit Act 1974 and any regulations made under it falls on the Director General of Fair Trading¹ and local weights and measures authorities which are all known as 'enforcement authorities'². It appears that this bipartite structure envisages the director having responsibility for overall enforcement³, while the local authorities are concerned with the detailed enforcement of the Act in their respective areas. When proposing to institute proceedings for an offence under the Act⁴ the local weights and measures authority must give the director notice⁵ of the intended proceedings, together with a summary of the facts on which the charges are to be founded⁶. The authority must postpone the institution of such proceedings until either 28 days have expired since such a notice was given⁷, or until the director has notified it of receipt of the notice and summary⁸. Local weights and measures authorities must also, whenever the director requires, report to him on the exercise of their functions under the Consumer Credit Act 1974⁹.

1 Consumer Credit Act 1974 s 161(1)(a). As to the Director General of Fair Trading see para 110 ante. Where necessary or expedient, the director himself must take steps to enforce the Act and regulations made under it: s 1(1)(d). This applies to a refusal or failure of a local weights and measures authority so to act.

2 Ibid s 161(1)(b). The local weights and measures authorities are (1) in England, (a) for each non-metropolitan county, metropolitan district and London borough, the council of that county, district or borough; (b) for the City of London and the Inner and Middle Temples, the Common Council of the City of London; and (c) for the Isles of Scilly, the Council of the Isles of Scilly (Weights and Measures Act 1985 s 69(1)); and (2) in Wales, (a) for each county, the county council; and (b) for each county borough, the county borough council (s 69(2) (amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 75)). As to the duties and functions of such authorities see the Weights and Measures Act 1985 Pt VI (ss 69-78); and WEIGHTS AND MEASURES vol 50 (2005 Reissue) para 20 et seq.

3 See the Consumer Credit Act 1974 s 1(1)(c); and para 110 ante.

4 This duty does not apply to offences under ibid s 162(6) (see para 306 post), s 165(1), (2) (see para 311 post), or s 174(5) (see para 313 post): s 161(2).

5 For the meaning of 'notice' see para 128 note 3 ante.

6 Consumer Credit Act 1974 s 161(2). This duty is only as between the authority and the director: s 161(2).

7 Ibid s 161(2)(a).

8 Ibid s 161(2)(b).

9 Ibid s 161(3). Such a report must be in such form and with such particulars as the director requires: s 161(3).

UPDATE

288-313 Judicial Control, Offences and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements

mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

305 Enforcement authorities

TEXT AND NOTES--Consumer Credit Act 1974 s 161 amended: Enterprise Act 2002 Sch 25 para 6(32).

TEXT AND NOTES 6-8--Consumer Credit Act 1974 s 161(2) repealed: Enterprise Act 2002 Sch 26.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/13. JUDICIAL CONTROL, OFFENCES AND ENFORCEMENT/(3) ENFORCEMENT/306. Powers of entry, inspection and seizure.

306. Powers of entry, inspection and seizure.

A duly authorised officer of an enforcement authority¹, at all reasonable hours and on production, if required, of his credentials, may:

- 143 (1) in order to ascertain whether a breach of any provision of or under the Consumer Credit Act 1974 has been committed, inspect any goods² and enter any premises (other than premises used only as a dwelling)³;
- 144 (2) if he has reasonable cause to suspect that a breach of any provision of or under the 1974 Act has been committed, in order to ascertain whether it has been committed, require any person (a) carrying on, or employed in connection with, a business⁴ to produce any books or documents relating to it⁵; or (b) having control of any information relating to a business recorded otherwise than in a legible form to provide a document containing a legible reproduction of the whole or any part of the information, and take copies⁶ of, or of any entry in, the books or documents⁷;
- 145 (3) if he has reasonable cause to believe that a breach of any provision of or under the Act has been committed, seize and detain any goods in order to ascertain (by testing or otherwise) whether such a breach has been committed⁸;
- 146 (4) seize and detain any goods, books or documents which he has reason to believe may be required as evidence in proceedings for an offence under the Act⁹;
- 147 (5) for the purpose of exercising his powers under the above provisions to seize goods, books or documents, but only if and to the extent that it is reasonably necessary for securing that the provisions of the Act and of any regulations made under it are duly observed, require any person having authority to do so to break open any container and, if that person does not comply, break it open himself¹⁰.

An officer seizing goods, books or documents in exercise of these powers must not do so without informing the person he seizes them from¹¹. Additional powers may be conferred by a warrant issued for that purpose¹².

1 As to enforcement authorities see para 305 ante. Regulations provide that, in certain cases, an officer of a local weights and measures authority is not to be taken to be duly authorised unless he is authorised by the Director General of Fair Trading: Consumer Credit Act 1974 s 162(5). See the Consumer Credit (Entry and Inspection) Regulations 1977, SI 1977/331; and para 309 post. As to local weights and measures authorities see para 305 note 2 ante. As to the Director General of Fair Trading see para 110 ante.

2 For the meaning of 'goods' see para 82 note 5 ante.

3 Consumer Credit Act 1974 s 162(1)(a). An officer entering premises under s 162 may take such other persons and equipment with him as he thinks necessary: s 162(4).

4 For the meaning of 'business' see para 81 note 7 ante.

5 Consumer Credit Act 1974 s 162(1)(b)(i).

6 As to the meaning of 'copy' see para 174 text and note 4 ante.

7 Consumer Credit Act 1974 s 162(1)(b)(ii). Nothing in s 162 compels a barrister or solicitor to produce a document containing a privileged communication made by or to him in that capacity: s 162(7). As to legal professional privilege generally, and for the meaning of 'privileged communication', see *Wheeler v Le Marchant* (1881) 17 ChD 675, CA; *Calcraft v Guest* [1898] 1 QB 759, CA; *Butler v Board of Trade* [1971] Ch 680, [1970] 3

All ER 593; *Alfred Crompton Amusement Machines Ltd v Customs and Excise Comrs (No 2)* [1974] AC 405, [1973] 2 All ER 1169, HL; and CIVIL PROCEDURE vol 11 (2009) PARA 558 et seq.

8 Consumer Credit Act 1974 s 162(1)(c).

9 Ibid s 162(1)(d).

10 Ibid s 162(1)(e).

11 Ibid s 162(2). Any goods seized by an officer may be tested, and in the event of such a test he must inform the person he seizes them from of the test results: s 164(3). As to the testing of goods see para 310 post.

12 As to such powers see para 307 post.

UPDATE

288-313 Judicial Control, Offences and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

306 Powers of entry, inspection and seizure

TEXT AND NOTES--Consumer Credit Act 1974 s 162 amended and repealed in part: Consumer Credit Act 2006 s 51(2), (3), Sch 4.

NOTE 1--Consumer Credit Act 1974 s 162(5) amended: Enterprise Act 2002 Sch 25 para 6(33).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/13. JUDICIAL CONTROL, OFFENCES AND ENFORCEMENT/(3) ENFORCEMENT/307. Entry under a warrant.

307. Entry under a warrant.

If a justice of the peace, on sworn information in writing, (1) is satisfied that there is reasonable ground to believe either (a) that any goods¹, books or documents which a duly authorised officer² has power to inspect under these provisions are on any premises and their inspection is likely to disclose evidence of a breach of any provision of or under the Consumer Credit Act 1974³; or (b) that a breach of any provision of or under the Act has been, is being or is about to be committed on any premises⁴; and (2) is also satisfied either (a) that admission to the premises has been or is likely to be refused and that notice⁵ of intention to apply for a warrant has been given to the occupier⁶; or (b) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to wait for his return⁷, the justice may, by warrant under his hand⁸, authorise an officer of an enforcement authority to enter the premises (by force if need be)⁹.

- 1 For the meaning of 'goods' see para 82 note 5 ante.
- 2 As to authorisation see paras 306 note 1 ante, 309 post.
- 3 Consumer Credit Act 1974 s 162(3)(a)(i).
- 4 Ibid s 162(3)(a)(ii).
- 5 For the meaning of 'notice' see para 128 note 3 ante.
- 6 Consumer Credit Act 1974 s 162(3)(b)(i).
- 7 Ibid s 162(3)(b)(ii).
- 8 The warrant continues in force for one month: *ibid* s 162(3).
- 9 *Ibid* s 162(3). An officer entering premises by virtue of s 162 may take such other persons and equipment with him as he thinks necessary; and on leaving premises entered by virtue of a warrant under s 162(3) must, if they are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them: s 162(4).

UPDATE

288-313 Judicial Control, Offences and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

307 Entry under a warrant

TEXT AND NOTES--Consumer Credit Act 1974 s 162(3) amended: Consumer Credit Act 2006 Sch 4. See also Consumer Credit Act 1974 s 162(8) (added by Consumer Credit Act 2006 s 51(3)).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/13. JUDICIAL CONTROL, OFFENCES AND ENFORCEMENT/(3) ENFORCEMENT/308. Owner's right to compensation for loss.

308. Owner's right to compensation for loss.

Where, in exercising his powers of entry and inspection¹, an officer of an enforcement authority² seizes and detains goods³ and their owner suffers loss by reason of (1) that seizure⁴; or (2) the loss, damage or deterioration of the goods during detention⁵, then, unless the owner is convicted of an offence under the Consumer Credit Act 1974 committed in relation to the goods, the authority must compensate him for the loss so suffered⁶.

Any dispute as to the right to or amount of such compensation must be determined by arbitration⁷.

- 1 Ie under the Consumer Credit Act 1974 s 162 (see paras 306-307 ante).
- 2 As to enforcement authorities see para 305 ante.
- 3 For the meaning of 'goods' see para 82 note 5 ante.
- 4 Consumer Credit Act 1974 s 163(1)(a).
- 5 Ibid s 163(1)(b).
- 6 Ibid s 163(1).
- 7 Ibid s 163(2). As to arbitration see ARBITRATION.

UPDATE

288-313 Judicial Control, Offences and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/13. JUDICIAL CONTROL, OFFENCES AND ENFORCEMENT/(3) ENFORCEMENT/309. Authority to enter and inspect.

309. Authority to enter and inspect.

Unless he is authorised by the Director General of Fair Trading¹, an officer of a local weights and measures authority² is not to be taken as a duly authorised officer³ so far as concerns the exercise of specified powers⁴ in relation to certain books or documents⁵.

- 1 As to the Director General of Fair Trading see para 110 ante.
- 2 As to local weights and measures authorities see para 305 note 2 ante.
- 3 In for the purposes of the Consumer Credit Act 1974 s 162 (powers of entry and inspection for duly authorised officers of enforcement authorities): see paras 306-307 ante.
- 4 In any power under ibid s 162(1)(b) (power to require persons to produce documents relating to a business); s 162(1)(d) (power to seize and detain goods required as evidence in proceedings under the Act); and s 162(1)(e) (power to require persons to break open containers): see para 306 ante.
- 5 Consumer Credit (Entry and Inspection) Regulations 1977, SI 1977/331, reg 2. The books or documents in question are (1) any book or document relating to the business carried on by the Bank of England or a bank which (a) is, or is deemed under any enactment to be, a bank within the meaning of the Bankers' Books Evidence Act 1879 s 9 (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 907); or (b) is a bank to whose books the 1879 Act is applied by or under any enactment; (2) any consumer hire agreement under which the owner is a public telecommunications operator within the meaning of the Telecommunications Act 1984 (see TELECOMMUNICATIONS AND BROADCASTING) and any book or document which contains particulars relating to such an agreement; and (3) any file kept by a credit reference agency about an individual: Consumer Credit (Entry and Inspection) Regulations 1977, SI 1977/331, reg 2 (amended by SI 1984/1046). For the meaning of 'consumer hire agreement' see para 82 ante; and for the meaning of 'credit reference agency' see para 274 ante.

Where a debtor under a consumer credit agreement has consented in writing to the exercise of any power under the Consumer Credit Act 1974 s 162(1)(b) with respect to any book or document falling within head (1) above in so far as it contains information about the affairs of the debtor under that agreement then, in relation to any breach to which s 162(1)(b) applied before that consent was given, the Consumer Credit (Entry and Inspection) Regulations 1977, SI 1977/331, reg 2 does not apply to the exercise of that power by an officer with respect to that book or document so far as concerns that information: reg 2 proviso. For the meaning of 'debtor' see para 81 note 3 ante; and for the meaning of 'consumer credit agreement' see para 81 ante.

UPDATE

288-313 Judicial Control, Offences and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/13. JUDICIAL CONTROL, OFFENCES AND ENFORCEMENT/(3) ENFORCEMENT/310. Power to make test purchases and agreements.

310. Power to make test purchases and agreements.

An enforcement authority¹ may make, or authorise any of its officers to make on its behalf, such purchases of goods² as may appear to it expedient for determining whether any provisions made by or under the Consumer Credit Act 1974 are being complied with³. For the same purposes, such an authority may authorise any of its officers to procure the provision of services or facilities, or to enter into agreements or other transactions⁴. Any act done by such an officer must be treated for the purposes of the Consumer Credit Act 1974 as done by him as an individual⁵ on his own behalf⁶.

Any goods seized by an officer under the Act may be tested, and in the event of such a test he must inform the person he seizes them from⁷ of the test results⁸. Where any test leads to proceedings under the Act, the enforcement authority must (1) if the goods were purchased, inform the person they were purchased from of the test results⁹; and (2) allow any person against whom the proceedings are taken to have the goods tested on his behalf if it is reasonably practicable to do so¹⁰.

- 1 As to enforcement authorities see para 305 ante.
- 2 For the meaning of 'goods' see para 82 note 5 ante.
- 3 Consumer Credit Act 1974 s 164(1)(a).
- 4 Ibid s 164(1)(b).
- 5 For the meaning of 'individual' see para 80 note 1 ante.
- 6 Consumer Credit Act 1974 s 164(2).
- 7 Ie the person mentioned in ibid s 162(2): see para 306 ante.
- 8 Ibid s 164(3).
- 9 Ibid s 164(4)(a).
- 10 Ibid s 164(4)(b).

UPDATE

288-313 Judicial Control, Offences and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/13. JUDICIAL CONTROL, OFFENCES AND ENFORCEMENT/(3) ENFORCEMENT/311. Obstruction of authorised officers.

311. Obstruction of authorised officers.

A person who:

- 148 (1) wilfully obstructs¹ an officer of an enforcement authority acting in pursuance of his statutory powers²;
- 149 (2) wilfully fails to comply with any requirement properly made to him by such an officer³; or
- 150 (3) fails, without reasonable cause, to give such an officer so acting such other assistance or information⁴ as he may reasonably require in performing his statutory functions⁵,

commits an offence⁶.

A person who is not a duly authorised officer of an enforcement authority, but purports to act as such⁷, commits an offence⁸.

1 As to the meaning of 'wilful obstruction' see *Betts v Stevens* [1910] 1 KB 1, DC; *Hinchcliffe v Sheldon* [1955] 3 All ER 406, [1955] 1 WLR 1207, DC (both cases on the meaning of a similar phrase in relation to police officers). See further CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 735.

2 Ie under the Consumer Credit Act 1974 (see para 306 ante): s 165(1)(a). As to enforcement authorities see para 305 ante.

3 Ie under *ibid* s 162 (see para 306 ante): s 165(1)(b).

4 If in giving such information, any person makes any statement which he knows to be false, he commits an offence: *ibid* s 165(2). This imposes a legal duty to assist and give information to enforcement officers, which goes beyond the moral or social duty to assist eg the police: see *Rice v Connolly* [1966] 2 QB 414, [1966] 2 All ER 649, DC. As to the offence of obstructing the police see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 735. An offence under the Consumer Credit Act 1974 s 165(2) is punishable on summary conviction by a fine not exceeding the prescribed sum and on conviction on indictment by a maximum of two years' imprisonment or a fine or both: s 167(1), Sch 1 (amended by virtue of the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see para 120 note 15 ante. As to the similar situation in respect of police officers see *Rice v Connolly* supra.

5 Consumer Credit Act 1974 s 165(1)(c).

6 *Ibid* s 165(1). Such an offence is punishable on summary conviction only by a fine not exceeding level 4 on the standard scale: s 167(1), Sch 1 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see para 202 note 19 ante.

7 Ie under the Consumer Credit Act 1974 s 162.

8 *Ibid* s 162(6). An offence under s 162(6) is punishable on summary conviction by a fine not exceeding the prescribed sum and on conviction on indictment by a maximum of two years' imprisonment or a fine or both: s 167(1), Sch 1 (amended by virtue of the Magistrates' Courts Act 1980 s 32(2)).

UPDATE

288-313 Judicial Control, Offences and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

311 Obstruction of authorised officers

TEXT AND NOTES 1-6--See also Consumer Credit Act 1974 s 165(1A) (added by Consumer Credit Act 2006 s 51(4)).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/13. JUDICIAL CONTROL, OFFENCES AND ENFORCEMENT/(3) ENFORCEMENT/312. Provision of false information to the Director General of Fair Trading.

312. Provision of false information to the Director General of Fair Trading.

A person who, in connection with any application or request to the Director General of Fair Trading¹ under the Consumer Credit Act 1974, or in response to any invitation or requirement of the director under that Act, knowingly or recklessly² gives information to the director which, in a material particular, is false or misleading, commits an offence³.

1 As to the Director General of Fair Trading see para 110 ante.

2 As to the meaning of 'knowingly' see *Knox v Boyd* 1941 JC 82 at 86; *Taylors Central Garages (Exeter) Ltd v Roper* [1951] WN 383, sub nom *Roper v Taylor's Central Garages (Exeter) Ltd* [1951] 2 TLR 284, DC; *Mallon v Allon* [1964] 1 QB 385 at 394, [1963] 3 All ER 843 at 847, DC, per Lord Parker CJ. As to the meaning of 'recklessly' see *Derry v Peek* (1889) 14 App Cas 337; *MFI Warehouses Ltd v Nattrass* [1973] 1 All ER 762, [1973] 1 WLR 307, DC; *R v Lawrence* [1982] AC 510, [1981] 1 All ER 974, HL. As to the mental element of offences generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 8 et seq.

3 Consumer Credit Act 1974 s 7. Such an offence is punishable on summary conviction by a fine not exceeding the prescribed sum and on conviction on indictment by a maximum of two years' imprisonment or a fine or both: s 167(1), Sch 1 (amended by virtue of the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see para 120 note 15 ante. As to applications to the director see para 111 ante.

UPDATE

288-313 Judicial Control, Offences and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

312 Provision of false information to the Director General of Fair Trading

TEXT AND NOTES--A person commits an offence if, for the purposes of, or in connection with, any requirement imposed or other provision made by or under the Consumer Credit Act 1974, he knowingly or recklessly gives information to the Office of Fair Trading ('OFT') (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 407), or to an officer of the OFT, which, in a material particular, is false or misleading: Consumer Credit Act 1974 s 7 (substituted by Consumer Credit Act 2006 s 51(1)).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/13. JUDICIAL CONTROL, OFFENCES AND ENFORCEMENT/(3) ENFORCEMENT/313. Restrictions on disclosure of information.

313. Restrictions on disclosure of information.

No information obtained under or by virtue of the Consumer Credit Act 1974 about any individual¹ may be disclosed without his consent²; nor may any information obtained under or by virtue of that Act about any business³ be disclosed except, so long as the business continues to be carried on, with the consent of the person for the time being carrying it on⁴.

However, these provisions do not apply to any disclosure of information made for certain specified purposes⁵, nor to any disclosure of information by the Director General of Fair Trading⁶ to the Bank of England⁷ for the purpose of enabling or assisting the Bank to discharge its functions⁸ or the director to discharge his functions⁹. Nothing in these provisions may be construed as limiting the particulars which may be entered on the register¹⁰ or as applying to any information which has been made public as part of the register¹¹.

Any person who discloses information in contravention of these provisions commits an offence¹².

1 For the meaning of 'individual' see para 80 note 1 ante.

2 Consumer Credit Act 1974 s 174(1).

3 For the meaning of 'business' see para 81 note 7 ante.

4 Consumer Credit Act 1974 s 174(2). See also *Murtagh v Newspaper Publishing plc* [1990] CCLR 64, CA.

5 See the Consumer Credit Act 1974 s 174(3) (as amended).

6 As to the Director General of Fair Trading see para 110 ante.

7 As to the Bank of England see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 793 et seq.

8 Ie its functions under the Banking Act 1987 and under the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218: reg 62(a).

9 Ie his functions under the Consumer Credit Act 1974 (see s 174(3A) (added by the Banking Act 1987 s 87(1))); the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218 (see reg 62(b)); and the Investment Services Regulations 1995, SI 1995/3275 (see reg 39). As to the functions of the director see para 110 ante.

10 As to the register see para 119 ante.

11 Consumer Credit Act 1974 s 174(4).

12 Ibid s 174(5).

UPDATE

288-313 Judicial Control, Offences and Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory

Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

313 Restrictions on disclosure of information

TEXT AND NOTES--Repealed: Enterprise Act 2002 s 247(d), Sch 26. See now Pt 9 (ss 237-247); and COMPETITION vol 18 (2009) PARAS 326-335.

As to the powers to require provision of information or documents under the Consumer Credit Act 1974 see s 174A (added by Consumer Credit Act 2006 s 51(5)).

Halsbury's Laws of England/CONSUMER CREDIT (VOLUME 9(1) (REISSUE))/13. JUDICIAL CONTROL, OFFENCES AND ENFORCEMENT/(4) SERVICE OF DOCUMENTS/314-400. Service of documents.

(4) SERVICE OF DOCUMENTS

314-400. Service of documents.

A document required to be served or given by one person ('the server') on or to another person ('the subject')¹ is to be treated as properly served on the subject if dealt with as follows². The document may be delivered or sent by post to the subject, or addressed to him by name and left at his proper address³. Where the document is to be served on the subject as being the person having any interest in land⁴, and it is not practicable after reasonable inquiry to ascertain the subject's name or address, the document may be served by (1) addressing it to the subject by the description of the person having that interest in the land (naming it)⁵; and (2) delivering the document to some responsible person on the land or affixing it, or a copy of it, in a conspicuous position on the land⁶.

Where a document to be served on the subject as being a debtor, hirer or surety⁷, or as having any other capacity relevant for the purposes of the Consumer Credit Act 1974, is served at any time on another person who (a) is the person last known to the server as having that capacity⁸; but (b) before that time had ceased to have it⁹, the document must be treated as having been served at that time on the subject¹⁰.

1 The Administration of Estates Act 1925 s 9 (vesting of the estate of an intestate in the Public Trustee) must not be construed as authorising service on the Public Trustee of any document which is to be served under the Consumer Credit Act 1974: s 176(7) (substituted by the Law of Property (Miscellaneous Provisions) Act 1994 s 21(1), Sch 1 para 6). As to the Public Trustee see EXECUTORS AND ADMINISTRATORS.

2 Consumer Credit Act 1974 s 176(1), (8).

3 Ibid s 176(2). For these purposes, a document sent by post to, or left at, the address last known to the server as the address of a person must be treated as sent by post to, or left at, his proper address: s 167(3). As to receipt of a document see also *Lombard North Central plc v Power-Hines* [1995] CCLR 24 (default notice).

Special provision is made that a notice of cancellation is deemed to have been served at the time of posting, whether or not actually received by the subject: see para 185 note 4 ante.

4 For the meaning of 'land' see para 93 note 2 ante.

5 Consumer Credit Act 1974 s 176(4)(a).

6 Ibid s 176(4)(b).

7 For the meaning of 'debtor' see para 81 note 3 ante; for the meaning of 'hirer' see para 82 note 3 ante; and for the meaning of 'surety' see para 200 note 6 ante.

8 Consumer Credit Act 1974 s 176(5)(a).

9 Ibid s 176(5)(b).

10 Ibid s 176(5). Anything done to a document in relation to a person who (whether to the knowledge of the server or not) has died must be treated for the purposes of s 176(5) as service of the document on that person if it would have been so treated had he not died: s 176(6).

Where a document is served by post, service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of the post: Interpretation Act 1978 s 7.

UPDATE

314-400 Service of documents

TEXT AND NOTE 3--1974 Act s 176(2) amended: Consumer Credit Act 1974 (Electronic Communications) Order 2004, SI 2004/3236. See also the 1974 Act s 176A (electronic transmission of documents) (added by SI 2004/3236).

---- End of Request ----

Print Request: Selected Items in Table of Contents: (317)

Time Of Request: Thursday, June 17, 2010 01:49:26